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# PRACTICAL TREATISE

ON

# THE LAW

RELATIVE TO

# APPRENTICES

AND

# JOURNEYMEN,

AND TO

# EXERCISING TRADES.

By J. CHITTY, Esq.

OF THE MIDDLE TEMPLE.

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# A PRACTICAL TREATISE

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LAW OF JOINTURES.

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# PREFACE.

THE numerous recent prosecutions on the Statute 5 Eliz. c. 4. against persons for *exercising trades and manufactures*, not having served as an *apprentice*, and against journeymen for combinations to raise their wages, having called my professional attention to this branch of the law, I have been induced to examine the subject with some attention, and as the result of my investigation may be beneficial to the Public as well as to the Profession, I offer the following pages to their consideration.

In the *first* chapter, as explanatory of the law upon this subject, I have considered the *principle* on which the Statute of Elizabeth was founded, and the *impolicy* of the measure; collecting the observations and opinions of the celebrated authors, Dr. Adam Smith, Hume, Paley, and Malthus, and of the judges, upon the subject.

In the *second* chapter are *practically* considered who may be bound *apprentice*, and to whom. The *mode* and *time* of the binding, and the requisites of the *indenture*. The *stamp* duty. The *counterpart* and the *enrolment* of the indenture.

In the *third* chapter the *service* under the indenture is considered, and the *rights* and *liabilities* as well of the *master* as of the *apprentice*; the law as to *assigning* or *turning over* an apprentice, and the *dissolution* of the apprenticeship, either by the term expiring—by the apprentice's coming of age—by the bankruptcy or insolvency of the master—by death—by consent—by award —or by order of justices.

The *fourth* chapter relates to the jurisdiction of justices of the peace and sessions, either to put an end to the contract, or to punish the apprentice, or to direct a return of the premium by the master.

The *fifth* chapter contains a comprehensive view of the law relating to the *freedom* of a corporate town, and to *setting up in trade* and *employing* others in it, shewing what *trades* are within the Statute of Elizabeth—what is a *using* of a trade—what kind of *service as an apprentice* is sufficient—what are illegal employments of journeymen, and lastly, the *modes of proceeding* for penalties incurrred under the Statute, or against bye laws. And the work concludes with an Appendix, containing the Statute 5 Eliz. c. 4. and the forms of indentures and proceedings.

J. CHITTY.

*Temple*, 16*th Nov.* 1811.

# OF THE LAW

RELATING TO

# APPRENTICES

AND

# SETTING UP TRADES.

## CHAPTER I.

### OF THE LAW RELATIVE TO APPRENTICES IN GENERAL, AND THE IMPOLICY OF THE EXISTING REGULATIONS.

BEFORE we consider minutely the various legislative provisions relative to apprentices, and which prohibit persons who have not served as such from being employed in trade, it will be proper to take a concise view of the general policy of those regulations, and to point out the injurious consequences which have ensued from their enactment.

Impolicy of legislative interference.

It is allowed by every writer on political economy, that the great object of all rational politics is to produce the greatest quantity of happiness in a given tract of country—that this must be effected by increasing the number of the percipients, provided they be comfortably supported—that the way to increase such number usefully and

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permanently, is to increase the effective demand for labour, which stimulates the improvement of agriculture and other sources of subsistence; and that consequently it is the duty of every legislator to use those means which are most conducive to this end (*a*). The only dispute is as to the *means* to be adopted. Upon this point the experience of all ages evinces, that every *direct interference* of the legislature with its subjects, by *prohibiting* or *restraining* any particular branch of honest labour, or by *encouraging* any particular branch at the expense of another, whether in agriculture or in commerce, has in general retarded the advances of public opulence, and that the sound policy of a legislator is not to *impose* restrictions or regulations upon domestic industry, but rather to *prevent* them from being imposed by the contrivance or folly of others (*b*). Where there is a free competition, the labour and the capital of every individual will always be directed by him into the channel most conducive to his own ultimate interest; of that interest *each is himself*, from a thousand circumstances, the best possible judge; and the interests of the whole community must in general be most effectually insured, when that of each individual is most judiciously consulted; upon this point the opinions of those celebrated writers, Smith, Hume, Paley, and Malthus are uniform (*c*). Dr. Adam Smith observes, " that every individual

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(*a*) 2 Paley. Mor. Phil. 345, 346.—2 Malthus. 433.—2 Smith. 200.

(*b*) Paley. 400.—2 Smith's W.N. 204-5. 201. 125. 118-9. —3 Hume's Hist. Eng. 403-4. —3 Smith's W. N. 183.—2 Malthus. 196.

(*c*) 2 Smith's W. N. 201. 204,5.

is continually exerting himself to find out the most advantageous employment; it is his own advantage indeed, and not that of society, which he has in view; but the study of his own advantage, naturally or rather necessarily leads him to prefer that employment which, under existing circumstances, is most advantageous to the community. What is the species of domestic industry which his capital can employ, and of which the produce is likely to be of the greatest value, every individual, it is evident, can, in his local situation, judge much better than any statesman or lawgiver can do for him. The statesman who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted not only to no single person, but to no council or senate whatever, and which would no where be so dangerous as in the hands of a man, who had folly and presumption enough to fancy himself fit to exercise it." Hume observes (*d*), "that all limitations and methods of supporting populousness and increasing manufactures, except by the interests of proprietors, are violent and ineffectual." And Dr. Paley observes, "that from those regulations of law relating to commerce, to plenty, to riches, and to the number of people, more is expected than laws can do; that the natural basis of trade is the rivalship of quality and price, or, which is the same thing, of skill and industry, and

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(*d*) Hume's Hist. Eng. 403.

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that every attempt to force trade by operation of law, is sure to be either eluded by the quick sightedness and incessant activity of private interest, or to be frustrated by retaliation, and that perhaps the only way in which the interposition of law is salutary in trade, is in the *prevention* of frauds." Mr Malthus, who was an advocate under the then existing circumstances for legislative interference in favour of agriculture, regrets that a system of general liberty with regard to commerce does not exist, and that the restraints and encouragements of peculiar branches of it, should give occasion for the interference which he proposes (*f*).

But though legislative regulations are thus in *general* impolitic, with reference to the *wealth* of a nation, when they interfere with any individual's employment, yet it may be admitted that some exceptions must be allowed to this rule, particularly in *foreign* commerce, where the legislature or the government in which they have reposed confidence, being aware of facts which could not possibly be within the knowledge of private individuals, foresee that prejudicial consequences would ensue to several, if some temporary restriction, regulation or encouragement of a particular branch of commerce were not introduced. It is certain also that there are some public purposes which may be promoted by the interference of a legislature with the freedom of employment amongst its subjects; for instance, the provisions of the navigation act, though crowded with prohibitions and encourage-

(*f*) 2 Malthus. 195, 6.

ments which diminish our profit, have always been held politic; because, by providing a nursery for our seamen, they materially contribute to the national defence (g). So on particular occasions bounties and drawbacks may be expedient. But these are exceptions, justifiable only in particular emergencies, when a sudden encouragement of one branch of trade is deemed necessary for political purposes, and do not in the least affect the general principle, *that the legislature should not interfere in regulating the industry, or direction of the capital of any individual.*

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But notwithstanding it is thus the undoubted policy to avoid any restraint on the freedom of trade or the employment of industry, and to prevent others from imposing such restraints, yet we find it to have been the mistaken policy of many states in Europe, not only to allow monopolies and restraints by others, but even for the legislature itself to impose general restraints to the same effect (*k*).

Thus in England we find *Corporations* have powers to exclude strangers from trading within their districts, and statutes prohibiting persons who have not served a prescribed apprenticeship, from exercising trade *any where.*

Corporation privileges.

With respect to *corporation privileges,* it has been observed by Dr. A. Smith (*i*), that they have always been applied for, with a view to obtain monopoly, and increase the profit of the vendors,

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(g) 2 Smith's W. N. 214, 5.
(h) 2 Smith. 137, 8.
(i) 1 Smith. 138. 143. 150. —3 Hume Hist. 404.

Corporation privileges.

though under pretence of the better government of the trade; and that in regard to the motive for granting them in ancient times, the prerogative of the crown seems to have been reserved rather for extorting money from the subject, than for the defence of the common liberty against such oppressive monopolies (*k*).

The exclusive privilege of an incorporated trade, necessarily restrains the competition in the towns where it is established to those who are free of the trade. To have served an *apprenticeship* in the town under a master properly qualified, is commonly the necessary requisite for obtaining this freedom (*l*). The customs or bye laws of the corporation regulate sometimes the *number* of *apprentices* which any master is allowed to have, and almost always the *number of years* which each *apprentice* shall be obliged to serve. The intention of both regulations is to enhance the price of the commodities, and derive a particular advantage by restraining the competition to a much smaller number of persons than might otherwise

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(*k*) 1 Smith. 143. Some of the existing monopolies and exclusive privileges, however, may have been justifiable in their origin, as granted in consideration of some particular acts beneficial to the community, done by private individuals, or as an inducement to merchants to adventure their capital in a hazardous branch of commerce or other concern, eventually advantageous to the public. Com. Dig. Trade. D. 1. 2 Smith, W. N.; and on that principle, patents and exclusive companies are still occasionally introduced; but the modern policy is, very cautiously to allow any such peculiar advantages. It would be improper to annul any corporation privileges which now exist, but no future ones should be granted.

(*l*) See instance where a custom of this nature was sanction, 2 T. R. 2.

be disposed to enter into the trade. The limitation of the number of apprenticeships restrains it *directly*, and a long term of apprenticeship restrains it more *indirectly*, but as effectually, by increasing the expense (*m*). The impolicy of these restrictions has induced our courts of justice to deny effect to them, in cases which have occurred, unless they were bound by prior decisions. Thus we find it decided that a *bye law*, that no person should exercise a trade unless he had served an apprenticeship in that *particular town*, is bad (*n*). And in the case of the Mayor of Winton *v.* Wilks, (*o*) Lord Holt was of opinion that, even a *custom* to exclude a person, who was not a freeman, from trading in the town, was bad, except in London; though the multiplicity of ancient decisions on the effect of such an immemorial *custom*, afterwards compelled the courts reluctantly to over-rule that determination (*p*). It has been recently decided, that a bye law, made by a company in a corporation restraining the *number* of apprentices to be taken by any of the members is void, as being in restraint of trade (*q*); though a bye law, to give effect to an immemorial *custom* by imposing a moderate penalty, seems valid; or the violation of the custom may be punished by action on the case (*r*).

Corporation Privileges.

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(*m*) 1 Smith. W. N. 138.

(*n*) Morris *v.* Staps, Hobart. 210.—Moore. 689. S. C.—1 Saund. 412. n. 3.

(*o*) 1 Salk. 203.—2 Lord Raym. 1129. S. C.—1 Saund. 312. n. 3.

(*p*) 1 Wilson. 233.—4 Burr. 1951.—3 Burr. 1856.—1 Saund. 312. n. 3.—Com. Dig. Trade, D. 2.—Vin. Ab. Trade, D. pl. G.—H. pl. 4.

(*q*) 7 Term Rep. 543.

(*r*) 1 Saund. 312. note 3.

Statutes relative to Apprentices.

It appears to have been the ancient policy of our *legislature*, to endeavour to promote husbandry at the expense of trade, by preventing persons in husbandry, and those who had not a certain freehold interest, from educating their children in trade. By the 7 Hen. IV. c. 17. it was enacted, that no man should put his son or his daughter to be an apprentice, unless he had 20*s*. a year in land or rent. Hume, in his History of the Reign of Henry the Seventh (*s*), observes, that this restriction was one great cause of the low state of industry during that period; and Henry the Seventh, because the decay of manufactures was complained of in Norwich, *from the want of hands*, exempted that city from the penalties of the law, and afterwards, the whole county of Norfolk obtained a like exemption with regard to some branches of the woollen manufacture. These absurd limitations, he observes, proceeded from a desire of promoting husbandry, which, however, is never more effectually encouraged, than by the increase of manufactures.

Upon the same erroneous policy the Statute 5 Eliz. c. 4. commonly called the Statute of Apprenticeship was passed. By this it was enacted (*t*), "that persons being householders, and having "half a plough land in tillage, may take by "indenture any apprentice above the age of ten "years and under eighteen in *husbandry*."

"That householders, twentyfour years old, car-"rying on inland trade, in a *city or corporate town*

(*s*) 3 Vol. 403. (*t*) Sect. 25.

" *shall* and may take the son of a freeman, not occu-
" pying husbandry, nor being a labourer, and inha-
" biting in any other city or corporate town, as
" an apprentice for seven years, provided the
" apprenticeship shall not expire before such ap-
" prentice is twenty-four years old. (Sect. 26.) But
" that a merchant, residing in a city or town cor-
" porate, and carrying on foreign trade, or that
" of a mercer, draper, goldsmith, ironmonger,
" embroiderer or clothier, shall not take an appren-
" tice unless it be his own son, or unless the father
" and mother of such apprentice, shall at the time
" of taking the same, have a *freehold* estate of
" forty shillings a year." (Sect. 27.)

" That a householder, four and twenty years old,
" not occupying husbandry, nor being a labourer,
" residing in a *market town not incorporated*,
" and exercising any art, mystery or manual oc-
" cupation, may take as an apprentice the child
" of any *other artificer* not occupying husbandry,
" or being a labourer. But prohibits any such per-
" sons in foreign trade, or mercer, &c. from taking
" apprentices, as in corporate towns; with this
" exception, that instead of the parents having
" forty shillings a year, they must in a *market*
" *town* have a freehold of three pounds a year."
(Sect. 28 and 29.)

It then permits " any person using the art and
" occupation of a smith, wheelwright, carpenter,
" bricklayer, and other inferior trades and occu-
" pations there enumerated, *wherever* he may
" dwell, to take an apprentice to be instructed in

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" those occupations only, though the father or " mother had not *any* lands, tenements, or here- " ditaments." (Sect. 30.)

It then provides, " that a *woollen cloth weaver* " shall not take any apprentice, except in corpo- " rate and market towns, unless the person be " his own son, or the son of parents who have " freehold of three pounds a year." (Sect. 32.)

It then enacts, " that any person who shall have " three apprentices, in certain enumerated trades, " must keep one journeyman, and for every ap- " prentice above that number, he shall keep one " other journeyman or forfeit ten pounds." (Sect. 33.)

It then enacts, " that if any person shall be " required by a householder who has half a *plough* " *land* at least in tillage, to be an apprentice, and " to serve in husbandry, or in *any other kind of* " *art, mystery or science* before mentioned in the " statute, and shall *refuse* so to do, then if a " justice of the peace, or mayor, or head officer " shall think the said person *meet and convenient* " *to serve as an apprentice* in that art, labour, " science or mystery, the justice may commit the " person refusing to be bound as an apprentice *to* " *prison,* there to remain until he be contented, " and will be bound to serve as an apprentice." (Sect. 35). It is however provided by the 36th Section, " that no person above the age of " twenty-one shall be bound to *enter* into any " apprenticeship. But the 43d section directs that

" those who are under age shall serve in pursu- Statutes relative to Apprentices.
" ance of their indenture."

It then provides, " that all indentures, cove-
" nants, promises, and bargains, of or for the
" having, taking, or keeping any apprentice, other-
" wise than in pursuance of the statute, that is,
" by indenture for the term of seven years, shall
" be void, and that any person taking an appren-
" tice, contrary to the tenor of the act, shall be
" subject to a penalty of ten pounds." (Sect. 41)

And the statute enacts, " that it shall not be
" lawful to any person *to set up*, *occupy*, *use*, or
" exercise any craft, mystery, or occupation used
" or occupied in England or Wales at the time of
" passing the act, (that is, the year 1562,) unless
" he shall have been brought up therein seven
" years at the least as an apprentice, nor to *set*
" *any person on work* in such mystery, art, or
" occupation, unless he shall have been apprentice
" as aforesaid, subject to a penalty of forty shil-
" lings for every month." (Sect. 31.)

The *avowed* object of the legislature in passing this act, may be collected from its preamble, which recites, " that if an uniform order be prescribed
" and limited, concerning the wages of servants,
" and other orders for *apprentices*, there is good
" hope that it will come to pass that the same
" law, being duly executed, should banish *idleness*,
" advance husbandry, and yield unto the hired
" person, both in the time of scarcity and in the
" time of plenty, a convenient proportion of
" wages: be it therefore enacted, &c." But the

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provisions of the act were ill calculated to prevent idleness, or to encourage the education of youth in useful pursuits, for they prevent persons employed in husbandry, or whose parents are not possessed of a certain freehold estate, from being educated or employed in foreign, and in almost all other manufactures and trades. It is compulsory on infants, when a justice of the peace may think he ought to serve an apprenticeship, to serve accordingly; and it prohibits persons who have not served an apprenticeship for seven years, from setting up in trade for themselves, or being employed in it by others, and though this statute does not, in direct terms, compel any person to instruct or receive an apprentice, yet it has that operation, because he cannot employ any person as a journeyman who has not served an apprenticeship, without being subject to a penalty.

Though it is admitted by Voltaire and by all historians, that manufactures and commerce were greatly increased and improved in the reign of Elizabeth, yet it appears that this circumstance was rather attributable to accident, and the influx of foreign merchants, who were compelled by the persecutions of the Duke d'Alva to take refuge in England, than to any legislative interference of that time; and it is the observation of Hume, that as her monopolies tended to extinguish all domestic industry, which is more valuable than foreign trade, and is the foundation of it, so the general train of her conduct, was ill calculated to serve the purpose at which she aimed, much less to

promote the riches of her people; and he mentions several instances of her want of knowledge of true political economy (*u*). Dr. Adam Smith speaks decidedly (*v*), that the regulations of this statute should be repealed, as an encroachment upon natural liberty, without producing any beneficial result to the community, and that the natural liberty of exercising what species of industry they please, should be restored to every subject. He observes that the property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. (*w*) The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper, without injury to his neighbours, is a plain violation of his most sacred property. It is a manifest encroachment upon the just liberty both of the workman, and those who might be disposed to employ him. *As* it hinders the one from *working* at *what* he thinks proper, so it hinders the others from *employing whom* they think proper. To judge whether he is fit to be employed, may surely be trusted to the discretion of the employers, whose interest it so much concerns. The affected *anxiety* of the lawgiver, lest they should employ an improper person, is evidently as *impertinent* as it is *oppressive*.

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(*u*) 5 Hume. 477, 8, 9. 484. (*w*) 1 Smith. W. N. 141.
(*v*) 2 Smith. 222.

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The institution of long apprenticeships can *give no security that insufficient workmanship should not be exposed to public sale.* When this is done it is generally the effect of fraud, and not of inability, and the longest apprenticeship can give no security against *fraud.* Quite different regulations are necessary to prevent this abuse. The sterling mark upon plate, and the stamps upon linen and woollen cloth, give the purchaser much greater security than any *statute* of apprenticeship. He generally looks at these, but never thinks it worth while to inquire whether the workman had served a seven years apprenticeship.

The institution of long apprenticeships has *no tendency to form young people to industry.* A *journeyman* who works by the *piece,* is likely to be industrious, because he derives a benefit from every exertion of his industry. An *apprentice* is likely to be idle, and almost always is so, because he has no immediate interest to be otherwise. In the inferior employments, the sweets of labour consists altogether in the recompense of labour, and those who are *soonest* in a condition to enjoy the sweets of it, are likely *soonest* to conceive a relish for it, and to acquire early habits of industry. A young man naturally conceives an aversion to that labour, from which he has no *immediate prospect of benefit.*

*Long* apprenticeships are altogether unnecessary. The arts, which are much superior to common trades, such as those of making clocks and watches, contain no such mystery as to require a long

course of instruction. The first invention of such beautiful machines, indeed, and even that of some of the instruments employed in making them, must, no doubt, have been the work of deep thought and long time, and may justly be considered as among the happiest efforts of human ingenuity. But when both have been fairly invented and are well understood, to explain to any young man, in the completest manner, how to *apply* the instruments, and how to *construct* the machines, cannot well require more than the lessons of a few weeks, perhaps those of a *few days* might be sufficient. The dexterity of hand, indeed, even in common trades, cannot be acquired without much practice and experience. But a young man would practice *with more diligence and attention*, if from the beginning he wrought as a *journeyman*, being paid in proportion to the little work which he could execute, and paying in his turn for the materials which he might sometimes spoil through awkwardness and inexperience. His education would generally in this way be more effectual, and always less tedious and expensive.

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Lord Mansfield, in the case of Reynard *v.* Chase (*x*), spoke decisively as to the impolicy of this statute of Elizabeth; he said, "This is a *penal* "law: it is in *restraint* of natural right: it is "*contrary to the general* right given by the *com-* "*mon law* of this kingdom (*y*); and, I will add, "the policy upon which the act was made, is

(*x*) 1 Burr. *v* Rep. 6. See Peake. Cases, 148, 9.

(*y*) 11 Coke. 53.—1 Saund. 312.—1 Bla. 6. 437.

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"from experience become doubtful. Bad and "unskilful workmen are rarely prosecuted (*z*).

"The act was made early in the reign of Queen "*Elizabeth:* afterwards, when the great number "of manufacturers who took refuge in *England* "from the Duke d'Alva's persecution (*a*), had "brought trade and commerce with them, and "enlarged our notions, the restraint introduced "by this law was thought so unfavourable, that in "33 Eliz. in the Exchequer, it was construed "away (*b*): for it was holden clearly by the judges "in that case, (which construction, however, I "take *not* to be law now,) that if one hath been "an apprentice for seven years at *any* one trade "mentioned within the statute, he may exercise "any *trade named in it*, though he hath *not* been "an apprentice to it. All these observations only "shew, that this act, as to what enforces the "*penalty* of it, ought to be taken strictly, and "accordingly, the constructions made by former "judges, have been favourable to the qualifications "of the persons attacked for exercising the trade, "even where they have not *actually* served ap-"prenticeships. They have, by a liberal interpre-"tation, extended the qualifications for exercising "the trade, *much beyond* the letter of the act; "and have *confined* the *penalty and prohibition* "to cases *precisely within* the express letter," In Smith *v.* the Company of Armourers (*c*), Lord Kenyon expressed himself to the same effect,

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(*z*) In 3 Mod. R. 317. Dolben J. said, that no encouragement was ever given to prosecutions on this statute.

(*a*) See also 5 Hume. 403. Beawes Lex. Mer. 20.

(*b*) 4 Leon. 9 pl. 39.

(*c*) Peake's Cases, 148.

and in Hobbs *v.* Young (*d*), Dolben J. said, "that no encouragement was ever given to prosecutions upon this statute, and that it *would be for the common good if it were repealed*, for no greater punishment can be to the seller than to expose goods to sale ill wrought, for by such means he will never sell more." Statutes relative to Apprentices.

If it be for the interest of youth, that they should be bound to a trade, the parents will be induced by natural affection, or by a desire to get rid of the expense of supporting an idle child, to put him out apprentice. He will, according to the nature of the trade, and the presumed ability of the boy, bind him for a less or longer period, so that he may receive adequate instruction to enable him to be employed as a journeyman, and ultimately to set up in the business for himself. In most trades he may, in less than *half* the term of seven years, acquire a knowledge of every department of the business, so as to be competent at least to be employed as a journeyman; and finding that he has no spare time before him, and that, with due exertion, he will be competent, at the expiration of his apprenticeship, to reap the fruits of his industry, he will attend more assiduously, and acquire more rapidly, a knowledge of his occupation, than when he is to serve a more protracted apprenticeship, and thus will be obtained more productive labour, which it is the first object of sound policy to promote—no inconvenience could ensue from a short apprenticeship, because, if at the end of the

(*d*) 3 Mod. 317.

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time the youth should not be adequately informed, the parent might be invested with power to extend the term.

Besides the pernicious operation of the Statute of Elizabeth, in compelling *youth* to serve an apprenticeship of *unnecessary duration;* it operates also injuriously against *persons of full age. It precludes a person who has served an apprenticeship in one trade, from changing his occupation, and being employed in another*, either as a principal or a journeyman, unless he has served an apprenticeship in the latter (*e*); hence it frequently happens, that while excessive high wages are given to the workmen in one manufacture, those in another are obliged to content themselves with bare subsistence. The one is in an advancing state, and has therefore a continual demand for new hands, the other is in a declining state, and the superabundance of hands is continually increasing; but the prohibition precludes the workmen in the latter from employing themselves in the former, and consequently the price of the commodity to the consumer, is kept up at an excessive high rate; because it is several years before the increasing trade can be *legally* supplied with an adequate number of hands, to answer the demand of thepublic.

That clause in the Statute of Elizabeth, which prohibits persons from employing those who have not served an apprenticeship, has of late been enforced in various instances, by actions in the

(*e*) 1 Smith. 157.—1 Burr. 6.

Courts of Westminster, or by information at the Sessions. We may observe that these prosecutions have been uniformly instituted, not with a view to any advantage that might result to the public, but purely on the behalf of *journeymen*, in order to keep up the *high price of wages*, which would be diminished, if masters were at liberty to employ persons, who had not served an apprenticeship (*). Journeymen being thus enabled to exclude others from employment, are better enabled to carry into execution their combinations, which, it is obvious, from the great number of modern statutes upon the subject, have of late become very injurious to the community (*g*). By these means their wages are kept up to an enormously high price; and scarcely any mechanic employs his time in a steady course of industry, but, on the contrary, wastes the greater part of it in idleness and dissipation. And thus the very object of the legislature in passing the Statute of

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(*) It is not intended by this observation, that the amount of wages should unnecessarily be diminished; no one, who has considered the subject, can be an enemy to high wages. The comfort of the poor, and the security of the rich, depend on the liberal remuneration of the former for their honest industry; they should have wages sufficient to enable them and their families to enjoy the comforts of life, and occasional relaxation, according to their education, habits and degree. But when the wages are so high as to induce them to work scarcely more than three days in the week, the excess does not tend to their comfort or happiness. On the contrary, manufacturers or mechanics, whose education and habits do not lead them to any intellectual enjoyment, naturally fall into other pursuits, and it is to be regretted, that the rest of their time is too frequently occupied in drunkenness and dissipation, and they return with reluctance to their labour at the last moment, when necessity impels them. The association of mechanics in this dissipation is dangerous to the community, for it is then that are formed combinations, still further to raise the price of wages and to impose other terms on their employers, eventually so injurious to the community. (*f*)

(f) 1 Smith, 150.

(*g*) Sec. 39th. 40th. Geo. 3. c. 106—6 East. 417, and other statutes in Burn's Justice, tit. Servant.

Statutes relative to Apprentices.

Elizabeth, has been frustrated by their own provision. Repeal that statute, and all combinations will cease; wages will rise or fall in proportion to the real demand for labour, and mechanics and manufacturers will be induced, by the competition incident to the freedom of employment, to work with much more care and industry, and to become much better members of society than they are now found to be.

Parish Apprentices.

Besides this enactment in the statute 5 Eliz. c. 4. it was provided by the 43d of Eliz. c. 2. s. 1. with respect to *parish apprentices*, as they are usually termed, that the churchwardens and overseers of every parish, shall, with the consent of two or more justices of the peace, take order, from time to time, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and the 5th section enacts, that they may, with the assent of two justices of the peace, bind any such children to be apprentices, where they shall see convenient, till such man child shall come to be twenty-four years of age, (altered to twenty-one by 18 Geo. 3. c. 47.) and such woman child to the age of twenty-one, or the time of her marriage; the same to be as effectual to all purposes, as if the child were of full age, and had by indenture of covenant bound him or herself. From the recital in the 8th & 9th W. 3. c. 30. s. 5. it appears, that doubts were entertained whether the persons to whom such children are to be

bound, are compellable to receive them, as apprentices; and that in consequence, the provision had failed in it's due execution. By this statute of William, it is enacted, that where any poor person shall be appointed to be bound apprentice, the intended master shall receive and provide for him according to the indentures, signed and confirmed by the two justices, and also execute the other part of the said indentures, or *forfeit ten pounds*, subject to an appeal to the general or quarter sessions, whose order shall be conclusive. There is a similar provision relative to apprentices put out by particular incorporated districts. 20 Geo. 3. c. 36. upon which statutes it has been held, that, all persons are compellable to take a parish apprentice, even gentlemen of fortune, and clergymen. If on appeal to the sessions, the justices in the exercise of their discretionary power, think fit to decide that the master ought to take the particular apprentice (*h*), and if the master refuse to obey the order of the justices, or of the sessions, on appeal, he is liable to be indicted for his refusal; for it was observed by the Court, in the Queen *v.* Gold (*i*), that since justices are allowed the power to put out parish apprentices, the court must allow an indictment for disobedience, either in case of not receiving, turning off, or not providing for such apprentices, as the law requires.

Parish Apprentices.

In the establishment of *parish* apprentices, the legislature do not appear even to have had in view

(*h*) 1 Salk. 67.
(*i*) Comb. 289.—1 Salk. 67 and 30.—Bac. Ab. Master and Servant, C.

Parish Apprentices.

the instruction of youth, or to fit them for any trade or useful occupation; it is a misapplication of terms to call the parties bound an "apprentice," there is not even a direction to the master to afford the party bound any instruction; the whole of that part of the system is literally merely a parochial billet of youth, compelling clergymen, gentlemen, farmers, and traders, to quarter and support for seven years, a part of the poor, and to receive and feed, under their own roofs, persons, however obnoxious to them, in ease of the parish funds (*k*). It may be proper to observe, that neither the statute 5 Eliz. c. 4, nor the 43d Eliz. c. 2. were enacted with a view to *settlements*. The first was designed to *regulate trade*, and the latter merely to *maintain* children actually settled and recognized as parochial poor (*l*). The statutes relating to the settlement of an apprentice, by virtue of his apprenticeship, are the 13th and 14th Car. 2. c. 12. and 3 Will. and Mar. C. 11. s. 8. which entitle an apprentice, bound by indenture, to a settlement in a parish, where he resides forty days serving in that capacity (*m*).

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(*k*) The 32 Geo. 3. c. 57. s. 7. is a legislative declaration of the inconveniences occasioned by this description of apprentices; but see Lord Kenyon's observations, in 2 Term Rep. 726. and 3 T. R. 380, in favour of statute 43 Eliz.

(*l*) 1 Nolan, 310.

(*m*) See 1 Nolan, 307, &c.

## CHAP. II.

### OF THE PERSONS WHO MAY BE BOUND APPRENTICES, AND TO WHOM—MODE OF BINDING AND REQUISITES OF INDENTURE—THE STAMP THEREON—THE COUNTERPART, AND OF THE INROLMENT OF THE INDENTURE.

HAVING in the preceding chapter considered the policy of the regulations relating to apprenticeships, and the different legislative provisions which are compulsory upon a person to serve as an apprentice, or to receive another in that capacity, we will now examine more particularly the various enactments and decisions relative to this branch of the law; and these may be considered with relation to—1st, The definition of the term apprentice; 2dly, Who may be bound as such, and to whom; 3dly, The mode of binding, and requisites of the indenture; 4thly, The stamp thereon; 5thly, The counterpart; and 6thly, The inrolment of the indentures.

1st. The term "*Apprentice*" is derived from the French word *apprendre*, to learn (*a*), which etymology may sometimes assist us in the construction of the legislative provisions relative to apprenticeships. Thus in the case of the King *v.* Eccleston (*b*), Lord Ellenborough said, that I. Definition.

(*a*) 1 Bla. Com. 426. (*b*) 2 East. 298.

I. Definition. where the contract was that the master should *teach* the other a trade, and the latter was to do *nothing ulterior* the employment in that trade, it was a contract *apprendre*; in the true sense of the word it constituted an apprenticeship within the meaning of the legislative expression; and whenever a contract is executed with the solemnities incident to a binding by deed, and the object of the agreement is to instruct the party serving, it is rather to be considered as a contract of apprenticeship than of hiring as a servant (*c*).

II. Who may be bound apprentice, and to whom.

The 14 and 15 Hen. 8. c. 2. prohibits any alien or denizen from taking an apprentice upon pain of forfeiting ten pounds, half to the king, and half to the informer; but this does not seem to invalidate the indenture; and it has been held, that though a bye law, imposing a penalty on the master for taking an apprentice contrary to this regulation, may be valid, one declaring that the indenture shall be void, will not be so (*d*). The 5 Eliz. c. 4. appears to direct that persons taking an apprentice shall be of the age of twenty-four years. But this, as well as the regulation requiring the parent to have a certain freehold estate (as observed by Dr. Burn), appears obsolete (*e*); and for the purpose of settlement, it has been held that the age (*f*) of the master, and his condition or employment, are immaterial, if the binding be without fraud (*g*), and that a settlement will be

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(*c*) The King *v.* Rainbow, 1 East. 531.
(*d*) Moore. 411.
(*e*) 1 Burn's Justice. 101. 21 ed.
(*f*) 4 Term Rep. 196.—Cald. 444.—2 Bott. 617.
(*g*) 1 Bott. 613.

gained, although the master had no right to take such an apprentice (*h*).

II. Who may be bound apprentice, and to whom.

A minor, even without his parent's consent, *may voluntarily* bind himself, an indenture of apprenticeship being considered for his benefit, and he will be subject to the jurisdiction of the magistrates, under the 5 Eliz. c. 4. s. 43 (*i*). But no action can be brought at common law against an infant apprentice on his covenant to serve (*k*), nor can he be sued in equity (*l*); and though the statute 5 Eliz. c. 4. s. 42, 3. expressly enacts that the apprentice shall be bound as if he had been of full age, yet it has been held that this only subjects him to the jurisdiction of the magistrates, and not to an action for the breach of his covenant (*m*). But in London there is a custom that an infant shall be bound by his indenture, and he is liable to be sued on his covenant in any court (*n*). An adult may legally bind himself as an apprentice, in order to enable himself to set up trade, and may thereby gain a settlement, but in this case he must execute the indenture himself, or he cannot be deemed an apprentice (*o*).

The 5 Eliz. c. 4. s. 35. and 46. is *compulsory* on infants to become apprentices, if, upon the application of any householder therein mentioned, a

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(*h*) Vin. Ab. Apprentice, K. pl. 12.—2 Bott. 370.—Bull. N. P. 193.

(*i*) Foley. 154.—2 Bott. 370.—6 Term Rep. 556. and 652.

(*k*) Cro. Car. 179.—19 Vol. MS. 110. Bac. Ab. Master and Servant, B.—Com. Dig. Justice of Peace, B. 55.—8 East. 26.

(*l*) 1 Eq. Ca. Ab. 6.

(*m*) Cro. Car. 179.—19 Vol. MS. 110.

(*n*) Moore. 135.—Bac. Ab. Master and Servant, B.

(*o*) 9 East. 295.

II. Who may be bound apprentice, and to whom.

justice of the peace shall think it proper that he shall serve as an apprentice; and if he refuse, the justice is invested with a power to commit him to prison till he will be bound.

With respect to *parish* apprentices, the 43 Eliz. c. 2. and 18 Geo. 3. c. 47. give power to the churchwardens and overseers, with the consent of two justices of the peace, to bind out any male child till the age of twenty-one, and any female to the same age, or the time of her marriage, and provide that such binding shall be as obligatory on the child as if he had bound himself; and the 8 and 9 W. 3. c. 30. s. 5. *compels the master* to receive such *parish* apprentice, and in default thereof he forfeits ten pounds, or may be indicted for his refusal (*p*).

III. Mode of binding and requisites of indenture.

With respect to the *mode and terms* of the *binding*, unless the requisites of the Statute of Elizabeth have been observed, the contract will in general be invalid. But here it is necessary to premise, that although for some purposes a binding contrary to the provisions of these statutes may be inoperative, yet for *others* the contract will be deemed an *apprenticeship*. The provisions with relation to apprenticeships are of three descriptions. The first and main object of the legislature was either the education of youth, or the maintenance of poor children *for seven years*; the *second*, to secure to apprentices who duly served their masters, *as such*, *for forty days*, a settlement in the parish where they so served; and the *third* was merely an object of *revenue*, imposing a stamp duty according to the

(*p*) Ante, 21.

premium paid with the apprentice. We therefore find, that for the first purpose the binding must be for seven years, but for the two last a binding for a less term is sufficient. This was established with respect to settlements in the case of St. Nicholas *v.* St. Peters (*q*); and with respect to stamps, in the case of Rex *v.* Hingham (*r*). III. Mode of binding and requisites of indenture.

The Stat. 5 Eliz. c. 4. throughout its provisions requires the binding to be by *indenture*. So with regard to *parish apprentices*, the 3d W. & M. c. 11. requires, in conformity with the Statute of Elizabeth, that the binding shall be by *indentures*, that is by deed indented, and cut at the top in a waving or undulating line; and under these acts it has been held that the instrument should be actually indented; and in Smith *v.* Birch (*s*), where an action was brought for enticing away an apprentice, and the instrument being produced, began with the words "*This Indenture*," &c. but in fact the parchment was not *indented*, it was decided that it was a deed poll; and this accords with the doctrine laid down by Lord Coke (*t*). But with respect to *parish* apprentices, the Statute 31 Geo. 2. c. 11. enacts that no person "who shall be "bound an apprentice by any deed, writing, or "contract, not indented, being first legally stamped, shall be liable to be removed from the place "where he was so bound and resident forty "days, by virtue of any order of removal, or or- By *Indenture*, and when sufficient if not indented.

(*q*) Burrows' Settlement Cases, 91.—See other cases in 1 Nolan's Poor Laws, 313.

(*r*) Caldecot, 371.—1 Bott. 553. and 6 T. R. 452.

(*s*) 1 Sess. Cases. 222.

(*t*) Co. Litt. 143. b. 229. a.—2 Bla. Com. 295, 6.

By *Indenture*, and when sufficient if not indented.

" der of Sessions, by reason of such deed, writing, " or contract *not being* indented only." But this act does no more than cure the want of *indenting*; the binding must still be by *deed*. It must therefore be in writing, and have the other formalities of a deed, and no binding by parol or by any written agreement, or any other mode *except by deed*, will either constitute an apprenticeship under 5 Eliz. c. 4. or entitle the party serving to a settlement. This was established in the case of Rex *v.* Stratton (*u*), where the pauper was placed out by the parish officers to a parishioner, under the following agreement, written in a leaf of the parish book, " August 7th, 1774, at a general meeting, " held at the parish of B. this day, it is agreed, " that R. F. shall take H. E. and maintain her, " after the manner of an apprentice, on this day " until Michaelmas 1780, R. F. to have twenty " pounds with her, and at the expiration of her " said time to double clothe her. Witness my " hand R. F." She served a year and a half, but was held not to have gained a settlement as an apprentice, for the binding was not by deed, and having served as an apprentice, it could not be construed into service as an hired servant. And in the King *v.* Ditchingham (*v*), the Court said, that though this act of parliament has dispensed with the necessity of having the deed of apprenticeship indented; it is still necessary that the

(*u*) Burr. S. C. 272. See also id. 290.—1 Bott. 527.—4 Term Rep. 769.—5 Term Rep. 152.

(*v*) 4 Term Rep. 770.

binding should be by deed, and that as the service of an apprentice cannot be converted into a service as an hired servant, therefore the pauper did not gain a settlement. By *Indenture*, and when sufficient if not indented.

The 35th section of the Statute 8 Ann, c. 9. directs, that the indenture shall be *dated* on the day of execution; but the 45th section does not appear to invalidate an indenture on account of the non-observance of this regulation. The indenture should not be antedated, or at least if it be, the seven years should commence from the time of the actual execution, or it will not be a binding in conformity with the Statute, and the parties will not be precluded from shewing, that the deed was executed on a day different to that on which it is dated (*w*). Date.

It is also necessary for the two purposes of trade and settlement, that the master and apprentice should be *named as parties* to the deed, and that the former stipulate to instruct, and the latter to learn (*x*); and if there be no stipulation to serve, there will be no apprenticeship; and therefore in the case of the King *v* Cromford (*y*), where the master and father of a boy agreed, under seal, that the master should teach the son, but there was no engagement that the latter should serve, it was held no apprenticeship in point of law, and that consequently the boy did not gain a settlement by his service under it. And Lord Ellenborough said, "Here is neither a binding of the son himself an Persons to be named as parties.

(*w*) 4 East. 477. 26, 7.
(*x*) 2 Salk. 479.—8 East. (*y*) 8 East. 25.

Persons to be named as parties.

apprentice, nor (if I may say so) of his parent for him; for there is no contract for his serving his master, nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so, he only continued to be taught as long as he pleased, but was not obliged to stay, this was no apprenticeship." And Lawrence J. asked, "how any action could have been brought against any person for harbouring the boy as an apprentice, or how he himself could have been proceeded against under any of the Statutes for regulating apprentices?" On the same principle, it was held, that where a gentleman placed his servant under the instruction of a barber, and the servant was no party to the deed, he could not be deemed an apprentice, so as to gain a settlement (z). It is not absolutely necessary, that the parent or any friend should be parties to the indenture, on behalf of the infant, for we have seen that he is competent to bind himself so as to be compellable to serve by the intervention of the magistrates, though he cannot be sued, and it is only on the latter account that it is usual for a parent or friend to join and covenant for his good behaviour (*a*). It is not necessary that the covenants of the parent or friend should be introduced into the deed by any particular form of words. The covenant of the apprentice, as well as that of his parent or friend, may be created by any words which import a stipu-

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(z) 2 Salk. 479. 1 Bott. 530.—Andr. 373.—
(*a*) 6 Term Rep. 557, 8.— Cro. Car. 179.—19 Vol. MSS.
Foley. 154.—2 Bott. 370.— 110.

lation that he shall serve (*b*), and the usual concluding words, "and for the true performance of all and every of the said covenants, each of the said parties bindeth himself to the other," amount to a covenant by all the parties who execute the indenture, for the due performance of those covenants, which may be applicable to their respective situations (*c*). Persons to be named as parties.

It is not necessary, at least for the purpose of gaining a settlement, that the *master* should *execute* the indentures, it is sufficient if the apprentice be bound to him (*d*), and it may be collected from the case of the King *v.* Stratton (*e*), that in the case of voluntary apprenticeships, either the infant, or his parent or guardian, must execute the indentures, and that in case of parish apprentices he or the overseers should execute, or one of the magistrates. "The indenture of apprentices who are put out by the parish, varies but little in substantial particulars from those, under which minors are bound by their own free will, with their parents consent. The chief difference is, that the parish officers must be parties to the parish indenture, in which case, it requires the assent of two justices, which must be given in each other's presence, or the binding is void. "For in such a most serious "subject as this, the legislature intended, that the "magistrate should have a check and controul "over the parish officers, and they are called upon "to examine with the most minute and anxious

Execution.

Parish indentures.

Officers parties.

Assent of justices.

(*b*) Moore, 135.—Dougl. 518.

(*c*) Dougl. 518.

(*d*) 1 Bott. 544.—2 Bott. 377.

(*e*) Burr. S. C. 272.—1 Bott. 526.

Assent of justices.

" attention, the situation of the master, to whom " the apprentices are to be bound, and to exercise " their judgment solemnly and soberly, before they " allow or disallow the act of the parish officers, " for which purpose it is necessary that they should " confer together (*f*)." But it is sufficient although one magistrate signs the indenture when alone, provided he is present afterwards when the other signs it, for the assent of the first is also given at that time (*g*). As far as the matter can be traced, the assent of the justices has been always signified by signing (*h*). But the assent by the justices is only necessary when the minor is put out by the parish.

Voluntary binding of a pauper.

It is not so when a poor person binds himself voluntarily as an apprentice; for 43 Eliz. c. 2. only extends to cases where a poor child is put out in a compulsory way (*i*).

It has been held upon questions of *settlement*, that the execution of the indenture by the apprentice, when put out by the parish, is not material, and that if the indenture be duly signed by the master, and the apprentice live under the binding, his consent will be inferred, even where he was originally carried to the master by his parent against his consent (*k*). But we have seen that if the apprentice be an adult, he must execute the indenture, or he will not even gain a settlement (*l*).

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(*f*) 3 Term Rep. 380.—1 Bott. 386.

(*g*) 8 Term Rep. 454.—1 Bott. 722.

(*h*) Per Buller, J., Rex *v.* Saltren, Cald. 444.—1 Bott. 617.

(*i*) 1 Bott. 609.

(*k*) 2 Term Rep. 726.—1 Bott. 547. 610. 620.—2 Bott. 383.—8 East. 25.

(*l*) 9 East. 295.

With respect to the *time* for which the apprentice is to be bound, we have seen that the 5 Eliz. c. 4. is imperative, that it shall be for seven years. If this regulation be not complied with, the indentures are voidable at the parties election (*m*). But a binding, by deed, for less time, as for four years, will confer *a settlement*, though it will not enable a party to set up a trade, and would subject the master to the ten pound penalty, for taking an apprentice contrary to the regulations of the statute (*n*). It has been held, that where a party is bound as an apprentice for less than seven years, no third person can avail himself of this deviation from the statute, so as to protect him from liability to an action for enticing away such apprentice, though it would be proper in declaring, at least in one count, not to describe it as a strict, legal apprenticeship (*o*); and it has also been held, that as between the parties themselves, the indenture is not absolutely void, but only voidable, and that it must be avoided in a proper, and not a surreptitious manner. And therefore in the case of Rex *v.* Evered (*p*), where an apprentice, who had been bound for six years, ran away, alleging afterwards, that he did so with intent to avoid the indenture, it was argued, that the apprentice, who had submitted to the indenture as long as he de-

Binding for seven years how far necessary.

(*m*) 1 Anstr. 256.—6 Esp. R. 8.

(*n*) 1 Bott. 530. 546.—2 Bott. 370.

(*o*) 6 Term Rep. 652.—7 Term Rep. 310. 314.—6 Mod. 69.—2 Hen. Bla. 511.—Bur. Sett. Cases, 91.—2 Bott. 370. to 376; but see 1 Anstr. 256.—6 Esp. Rep. 8.

(*p*) Caldecott's Rep 26.—1 Bott. 530, 1.—6 Term Rep. 652.

Binding for seven years how far necessary.

rived any advantage from it, and till he learnt his trade, should not be permitted to desert his service as soon as he became useful in it; for that, a contrary construction of the contract would be injurious to the master; but that the contract at the time of it's commencement, which was during infancy, the time at which almost all apprenticeships are entered into, was beneficial to the infant; and being so, might legally be made, and therefore could not be abandoned; and Lord Mansfield said, "It has been adjudged, that an infant may bind himself for his own benefit; and it is settled, in the case of Rex *v.* St. Nicholas (*q*), that a binding for four years gives a settlement;" and Aston, Justice, said, "Supposing the indenture voidable, I cannot conceive that the apprentice's *running away* can avoid them; had he served regularly, and during such service declared his intention to depart, it might have been different: here he would make use of his offence, in order to avoid the punishment that attends it, but it is too late to do it before a justice, when charged with a crime. And Willes and Ashhurst, Justices, were of the same opinion; the Court seem also to have been of this opinion in the case of Ascroft *v.* Berttes (*r*); but from the case of Guppy *v.* Jennings (*s*), it may be collected, that in no case can an action be brought against the parent who covenanted for the service

(*q*) 1 Bott. p. 525. pl. 709.

(*r*) 6 T. R. 652. vide also 557. sed quære see 1 Anstr. 256.—6 Esp. Rep. 8. and of what avail could it be for magistrates to interfere, the apprentice being immediately at liberty to give a formal notice of his intention to dissolve the contract.

(*s*) 1 Anstr. 256.

of the apprentice, where the binding is for less than seven years, where the apprentice has thought fit in any manner to evince an intention no longer to serve as an apprentice; and in Burnly *v.* Jennings(*s*), where the apprentice had absconded, Lord Ellenborough expressed his opinion, that no action could be supported upon a bond for the service of an apprentice for five years. In the case of St. Nicholas *v.* St. Peters (*t*), the question, how far a binding for a less term than seven years is valid, was fully considered. James Blythe, being under sixteen years of age, and unmarried, was bound apprentice to J.B. of St. Peter's, in Ipswich, cordwainer, by indenture, and with the consent of his father, for the term of four years only; and he dwelt with, and served his master in St. Peter's only the four years. The Sessions was of opinion, that the binding and inhabiting, pursuant thereto, did not entitle the pauper to a settlement in St. Peter's, because he was not bound for seven years, according to the Statute 5 Eliz. c. 4.; and they therefore discharged the order of the two justices. To this order it was objected, that the Sessions had mistaken the law; for that by the Statute of 3 and 4 William and Mary, c. 11. s. 8. a binding for four years, or for any other time under seven years, together with an inhabitancy for forty days, would gain a settlement; for the words of that section are only these: "If any person shall be bound an appren-
"tice by indenture, and inhabit in any town or
"parish, such binding and inhabitation shall be

Binding for seven years how far necessary.

A binding for less than seven years is only *voidable*, and not *void*.

(*s*) 6 Esp. Rep. 8. —2 Bott. 370.
(*t*) Burr. Sett. Cases. 91.

A binding for less than seven years is only *voidable*, and not *void*.

"adjudged a good settlement;" and the case of St. Bride's *v.* St. Saviour's (*u*) was only a binding for four years. A rule was made to shew cause why the order should not be quashed; and upon arguing the case, the counsel for St. Peter's, in support of the order of sessions, insisted that this indenture was void to all intents and purposes, by 5 Eliz. c. 4. s. 41. whereby it is enacted, "That "all indentures for taking any apprentices, other-"wise to be made than by that statute is ap-"pointed, shall be clearly void in the law to all "intents and purposes;" and that it is appointed by the 26th section of the same statute, "That "persons dwelling in cities and towns corporate, "shall take apprentices for seven years at the "least;" whereas this master, dwelling in a town corporate, had taken this apprentice only for four years. They said it was as much absolutely void, as if the indenture had been unstamped; in which case it would be as no indenture or binding at all; and to prove this, they cited the case of Cuerden *v.* Leyland (*w*). The case was adjourned; and upon the counsel for the parish of St. Nicholas moving to make the rule absolute, Lord Hardwicke intimated some doubt whether it might not come within the cited case of Cuerden *v.* Leyland; and it was again adjourned; for Lord Hardwicke observed, that as this was a very extensive question, it would be proper to consider maturely the act of 5 Eliz.; for, if the Court should determine

(*u*) 2 Salk. 533.
(*w*) See 2 Strange. 903, and Sess. Cas. ed. 1760. vol. 2 p. 167. No. 134.

that every indenture of apprenticeship shall be absolutely void, where every circumstance of the directions of that act is not exactly pursued, it would be attended with a greater inconvenience than could easily be foreseen; and that it might be doubted, upon the 26th section, whether the words "shall and may," there used, ought to be taken so strong as to make all other bindings void; or, whether that and the next following clauses were only inserted for the benefit of corporations. Upon its being again argued, the Court gave their opinions at large. Lord Hardwicke, Chief Justice: "This is a case of very great consequence, and of a very extensive nature: if this be a valid objection, 'that the indenture is void,' it is very surprising that it has not been taken before now; but I do not find that it has been ever taken with relation to a settlement. The exception to the present order of sessions is, that by the special state of the case, it appears, that the pauper was bound in the parish of St. Peter, within the borough of Ipswich, for the term of four years only; and upon that foot (for all the other qualifications are taken for granted) the sessions have taken it up, and held it to be a bad settlement. The question is, 'Whether an apprentice bound for less than seven years can gain a settlement?' I am of opinion, that he may gain a settlement under such a binding; and therefore that this original order of the two justices is good, and the order of sessions consequently bad. The words of 5 Eliz. c. 4. are very strong. In sect.

A binding for less than seven years is only *voidable*, and not *void*.

A binding for less than seven years is only *voidable*, and not *void*.

26. they are these: "That every person being an "householder, and twenty-four years old at the "least, dwelling or inhabiting, or which shall "dwell and inhabit in any city or town corporate, "and using and exercising any art, mystery, or "manual occupation there, *shall and may*, during "the time that he shall so dwell or inhabit in any "such city or town corporate, and use or exercise "any such art or mystery, or manual occupation, "have and retain the son of any freeman, not "occupying husbandry, or being a labourer, and "inhabiting in the same, or in any other city or "town that now is, or hereafter shall be, and con-"tinue incorporate, to serve and be bound as an "apprentice after the custom and order of the "City of London, for *seven years* at the least; so "as the term and years of such apprenticeship do "not expire or determine afore such apprentice "shall be of the age of twenty-four years at the "least." Between this 26th section and the 41st, there are a great many regulations concerning the persons who are to take an apprentice, and who are to be bound apprentices. Then comes section 41st, which says, "That all indentures, covenants, "promises, and bargains, of or for the having, "taking, or keeping of any apprentice, other-"wise hereafter to be made or taken, than is by "this statute limited, ordained, and appointed, "shall be clearly void in the law, to all intents "and purposes; and that every person that shall "from henceforth take, or newly retain any ap-"prentice contrary to the tenor and true meaning

" of this act, shall forfeit and lose, for every ap- A binding for less than seven years is only *voidable*, and not *void*.
" prentice so by him taken, the sum of ten
" pounds." The question therefore turns upon this 41st section, taken together with the 26th. And it is to be inquired—1st, Whether the 41st section has a relation to, and runs over all the several clauses of the act, so as reach the 26th section. 2dly, If it do, then whether it makes such an indenture void, or whether it makes it voidable only. First, I do not see but that it does run over the several clauses of the act, so as to reach the 26th clause. Secondly, I am of opinion, that it does not make this indenture void, but only voidable, if the parties themselves think fit to take advantage of it. There are many cases, where, though according to the strict words, a thing is made void, yet such thing is held not to be absolutely void, but only voidable. One instance of this is the Statute of Westm. 2. c. 1. relating to fines levied by tenant in tail. The act says, that the fine shall be "*ipso jure nullus*," as strong an expression as can be thought of: and yet it has been held that it shall not be absolutely void against the issue in tail, but only work a discontinuance, and put him to his *formedon*, if he thinks fit to take advantage of it. In Hob. 166. in the case of Winchcomb v. Bishop of Winchester and Pulleston, several cases of this kind are collected; one of which is very material, viz. That a sheriff's bond against the Statute of 23 Henry 6. is made utterly void; and yet "*Non est factum*," cannot be pleaded to it. That, is the case of a

A binding for less than seven years is only *voidable*, and not *void*.

bond; this of an indenture. Here is an indenture between the master and his apprentice to serve for four years; and the apprentice has actually served four years: it has had its effect between the parties; neither of them has thought fit to take advantage of any defect in it. The parish has had the benefit of this apprentice's service, as far as the service of an apprentice is a benefit to a parish, and yet the parishioners would make it void: this would, I think, be extremely hard. I will mention a case which was not mentioned at the bar; it is in 1 Salk. 98. Barber v. Dennis; but is more fully stated in 6 Mod. p. 69. The widow of a waterman, who, as was said, by the usage of Waterman's Hall, may take an apprentice, had her apprentice taken from her and put on board a Queen's ship, where he earned two tickets, which came to the defendant's hands, and for which the mistress brought trover. It was agreed, the action would well lie, if the apprentice were a legal apprentice; for, his possession would be that of his master, and whatever he earned shall go to his master. But it was objected, that this supposed apprentice was no legal apprentice, if the indentures be not enrolled pursuant to the Act of 5 Eliz.; and if he were not a legal apprentice, the plaintiff had no title. But Lord Chief Justice Holt said, he would understand him an apprentice, or servant *de facto*, and that would suffice against them being wrong doers. In the report in Salkeld, the word "servant" is not mentioned. And, indeed, an action could not have been brought for a ser-

vant's wages, either on board, or elsewhere: for a master cannot bring an action for the wages of his servant, though for the wages of an apprentice he may, because the time of an apprentice is considered as the time of the master; and what is earned by the apprentice is considered as belonging to the master. Now if the construction of this act had been so very strict as is contended for by the counsel, who have argued in behalf of this order of sessions, such a construction would have avoided the apprenticeship, to the effect then in question; and the mistress could never have maintained that action. Therefore, I am of opinion, that this indenture is not void, so as to be liable to be taken advantage of by a third person; but voidable only, at the election of the parties, if they think fit to take advantage of it. And it would be extremely hard that all these indentures should be absolutely void for want of any single qualification required by this act. If the time of service was the only circumstance liable to this objection, I should not think it of so much consequence; for, I believe, there are not many bindings for a less term than seven years; but there are a vast many other qualifications that are mentioned in the Act of 5 Eliz. which are all liable to the same objection; and if a binding for seven years be necessary, it follows, that if any one of these qualifications are wanting, the indenture will be in the very same case as if this circumstance of time was wanting; and if so, I question whether any one settlement under an indenture of apprenticeship

A binding for less than seven years is only *voidable*, and not *void*.

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has been gained for fifty years past. Therefore, upon this argument, I am of opinion that the settlement is good, though the binding was only for four years. But then there comes the Statute of 3 and 4 William and Mary, c. 11. s. 8. which enacts, "That if any person shall be bound an "apprentice by indenture, and inhabit in any "town or parish, such binding and inhabitation "shall be adjudged a good settlement, though "notice in writing be delivered and published;" from whence it is inferred, that if there be no binding by 5 Eliz. then there is no settlement by 3 and 4 William and Mary. But this Act of King William and Queen Mary takes it up as it finds it; and only intends that an apprentice should not be obliged to give notice in writing. The construction of both statutes must be the same. And though the notion of settlements of poor persons had not obtained at the time when the Act of 5 Eliz. was made, as it has done since, yet it was a mistake of one of the counsel, to say, that the 33 Eliz. was the first act relating to the settlement of poor persons; for 27 Henry 8. c. 25. which is printed in Rastall's edition of the Statutes at Large, establishes a settlement for such as had been born, or dwelt three years in any parish: there was a subsequent statute, 1 Edward 6. c. 3. But indeed the present notions of settlements have taken their rise from 13 and 14 Car. 2. c. 12. The principal objection to this binding for four years only was founded upon the determination of the Court, in the case of Cuerden *v.* Leyland, where

the indenture was holden to be absolutely void for want of being stamped; and how to distinguish that case from this is the difficulty. If there had been no other words in the Act of 8 Ann. c. 9. than there are in this, the difficulty had been great enough. But that case materially differs from the present; for, in that case, there were not only the words, "that all indentures whereupon the duty "was unpaid, and all unstamped indentures, "should be void;" but the act of parliament went on further, and added these words—"and "not available in any court or place, or to any "purpose whatsoever." And there is a subsequent clause which further enacts, "that no indenture "required by that act to be stamped, shall be "given or admitted in evidence in any suit to be "brought by any of the parties thereunto, unless "such party on whose behalf it shall be given or "admitted in evidence, do first make oath that the "whole sum really given with the apprentice, or "contracted for, was truly inserted." So that in that case it was superadded, 1st, that such indenture should not be available in any court or place; 2dly, that it should not be given or admitted in evidence; and yet the order made in that case was grounded upon the indenture which was not stamped, nor was the duty paid. Therefore the justices admitted a matter in evidence which they ought not to have done. And it has been holden, that if the justices admit evidence which they ought not to admit, it is a sufficient reason for quashing their orders. And therefore that case of Cuerden

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*v.* Leyland was properly determined; because the justices should not have admitted the evidence upon which they grounded their order. Therefore I am of opinion, that the present indenture is not absolutely void, but only voidable at most. Consequently, the order of sessions is bad, and ought to be quashed; and the first order affirmed. The other three judges concurred in opinion, that this indenture was not absolutely void, but only voidable; and that at the election of the parties only, and not by a third person; for that this indenture could only be avoided by the master or servant, who were the parties to it, but not by the parish, who have had the benefit of the service of this apprentice. They added some instances to prove that where the strict words of statutes seem to make things nullities, yet they must be regularly avoided, before they shall be absolutely considered as such; particularly where a previous sentence of excommunication is requisite; though a statute says, "that the person shall be *ipso facto* excommunicate." And they thought it would be inconvenient to admit too rigid a construction of the 41st clause of the 5 Eliz. c. 4. which seemed to them to be a law more beneficial to corporations than to the public in general, and which had not been much regarded or favoured (*x*)."

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(*x*) See also Rex *v.* St. Petrox, that the indenture of a parish apprentice bound "until "she shall have accomplished "her full age of twenty-one years," is not *void* for having omitted the alternative directed by 43 Eliz. c. 2. s. 5. "or the "time of her marriage." 2 Botts. P. L. 377. pl. 404.

So 43 Eliz. c. 2. s. 5. enacts, that male apprentices shall be bound out by the parish till the age of twenty-four (*y*). Yet a binding till twenty-three (*z*), or twenty-one, confers a settlement, for the statute is only directory, and not compulsory in this respect (*a*). The same directs, that *women-children* put out by the parish, shall be bound till they "shall come to the age of one and twenty "years, or the time of their marriage. But a girl "bound out by the parish to serve *for a longer* "*period* than the statute authorizes, viz. until "she should have accomplished her full age of "twenty-one years," omitting the alternative of marriage, thereby acquired a settlement. For the indenture is not void, nor voidable by any but the parties themselves (*b*). It is said further, that an indenture is good under that act, although it covenants for no certain time (*c*).

Less than what required by statute.

It has been supposed, that the apprentice must be retained by the name of an "*apprentice*," expressly otherwise, that he was no apprentice, though bound, but only an articled servant. But this seems erroneous, for later decisions (*d*) have recognized the import of the words, and the meaning of the parties as making the distinction between apprenticeship and servitude. For, an apprentice, (as observed by Grose, J. in Rex *v.* Laindon,) is a

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(*y*) But this is altered to the age of 21, by 18 Geo. 3. c. 47.

(*z*) Rex *v.* Chalbury, 1 Bott, 610. pl. 848.

(*a*) Rex *v.* Woolstanton, 1 Bott, 610. pl. 849.

(*b*) Rex *v.* St. Petrox, Burr. S. C. 248.—2 Bott. 377. pl. 404.

(*c*) Rex *v.* Woolstanton, 1 Nolan's P. L. 311.

(*d*) Bac. Ab. 546.—Cald. 367. —2 Bott. 221.—8 Term Rep. 379.—1 Bott. Appen. 710. pl. 1000.—2 East. Rep. 298.

Less than what required by statute.

person, who, by contract, is to be *taught* a trade in contradiction from a person who engages to *serve* generally. And as said by Lawrence, J. in the same case, in the case of Rex *v.* Little Bolton, Lord Mansfield only went thus far, that it must be collected from the words of the instrument whether or not the party is to serve as an *apprentice*; his lordship could not mean to say, that a contract of apprenticeship could not be formed so as to give a settlement to the party serving under it, without the introduction of the word "apprentice." Neither the word "apprentice," nor any other technical words are essential, provided the parties shew an evident intention to constitute the relation of master and apprentice (*e*). The Court, indeed, seems to have regretted that a criterion, equally certain and more general, has not been resorted to. This might have been, if regard had been had to the derivation of the term, and every contract by which the master engaged to *teach* and the servant to learn a trade had been held an apprenticeship (*f*).

Although the term "apprentice" is not made use of, yet, if the party give a *premium* to the master, who engages to teach him some trade or mystery, it will, prima facie, afford evidence of a contract of apprenticeship, for a servant never gives such a consideration, and such agreements would otherwise evade the duties imposed by the Statute 8 Ann. c. 9 (*g*).

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(*e*) per Lord Kenyon in 8 Term. Rep. 379.—1 East. 531.
(*f*) 2 East. 298.—8. T. R. 379.—Cald. 367.
(*g*) Cald. 370, 1.

Less than what required by statute.

And whenever the contract is executed with the solemnities incident to a binding by deed, and the object of the agreement is to instruct the parties serving, it is rather to be considered as a contract of apprenticeship, than of hiring as a servant. Thus in the case of Rex *v.* Laindon (*h*), Lord Kenyon, alluding to the fact, said the legal conclusion can only be drawn in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented. It has been determined, that the parties serving need not be retained *eo nomine* as an apprentice, but that it is enough, if the purpose of the contract be that the one shall teach and the other learn the trade. This is the case here, for the master engaged to *learn*, i. e. to *teach* the pauper here the art or mystery of a sawyer; and the object of the pauper was to be *taught* the business. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium given to the master.

But as far as relates to the question of the *settlement* of an apprentice, it seems that a contract to *serve*, for the purpose of learning a trade, is sometimes construed to be an hiring as a *servant*, and not an apprenticeship. And if the party engages to do the duties of a servant, ulterior to such as are incident to the trade he learns, that will not constitute an apprenticeship, for the extent of the service points out and explains the relation in which parties intended to stand towards each other (*i*).

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(*h*) 8 T. R. 379.

(*i*) 1 Nolan. 336, 7, &c.

Less than what required by statute.

Thus in the case of the King *v.* Inhabitants of Cotteshall (*j*), the pauper clubbed, i. e. contracted to serve for the purpose of being taught the trade of a bricklayer, and to have less wages, on account of learning the trade. He was to serve three years, at six shillingsa week the first year, seven shillings the second, and eight shillings the third. An agreement in writing was to be prepared, but was never drawn up. No premium was paid, and he was to *do any work his master set him about*, and was not to be absent from his business during any part of the time; and Lord Kenyon said, "it was impossible to raise a doubt upon the case; the part which states that the pauper was to do *any work his master set him about*, is decisive to shew that he must be considered as an *hired* servant, and although one of his objects was to learn a trade, that was deemed an equivalent to part of his wages."

How far necessary to *state the consideration* in the deed.

The Statute 8 Ann. c. 9. s. 39. and 45. enacts that the premium or *consideration* shall be *expressed in the deed*, or that the deed shall be void, and the apprentice shall not be entitled to his freedom of any town, or to set up in trade; and this regulation still subsists, as the 48 Geo. 3. c. 149. s. 2. refers to it (*k*), but this defect may be cured by getting the instrument stamped as presently pointed out (*l*).

The 5 Geo. 3. c. 46. sect 19. enacts that all

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(*j*) 5 T. R. 193. and see 1 East. Rep. 239.—2 East. 298.
(*k*) And see 7 Term Rep. 121.—5 East. 309.
(*l*) 44 Geo. 3. c. 98. s. 24.

printed indentures shall have the following memorandum printed under the same; viz. "The indenture, covenant, article, or contract, must bear "date the day it is executed; and what money or "other thing is given or contracted for with the "clerk or apprentice, must be inserted in words at "length; and the duty paid to the stamp office, if "in London, or within the weekly bills of mortality, within one month after the execution, and "if in the country, and out of the said bills of mortality, within two months, to a distributor of the "stamps or his substitute; otherwise the indenture "will be void, the master or mistress forfeit 50*l.* "and another penalty, and the apprentice be "disabled to follow his trade, or to be made free." And if any printer, stationer, or other person, shall sell or cause to be sold any such indenture, without such memorandum being printed under the same; he shall forfeit 10*l.* in like manner. (S. 19.) But since the 44 Geo. 3. and 48 Geo. 3. as the samp duty is paid before the execution of the indenture, this memorandum is no longer in use or observed (*m*).

How far necessary to *state the consideration* in the deed.

Indentures of apprenticeship must be properly *stamped*, or cannot be available for any purpose, though on payment of a penalty the objection may in general be removed. The Stat. 48 Geo. 3. c. 149. subjects indentures of apprenticeship, made since the 10th October, 1808 (*n*), where the apprentice is not bound by the *parish*, to the

Of the *stamps*.

(*m*) See Appendix A. see 44 Geo. 3. c. 98.
(*n*) For the prior stamps,

Of the *stamps.* stamp duty of 15*s.* where there is not a premium given of 30*l.* or upwards, and the duty progressively increases in proportion to the premium paid or agreed to be paid.

| | L. | s. | d. |
|---|---|---|---|
| **Apprenticeship and clerkship.—Indenture or other instrument, containing the covenants, articles, or agreements, for or relating to the service of any apprentice, clerk, or servant, who shall be put or placed to or with any master or mistress, to learn any profession, trade or employment whatsoever; except articles of clerkship to attorneys and others, hereinafter specifically charged;** | | | |
| **If the sum of *money*, or the *value of any other matter or thing* which shall be paid, given, assigned, or conveyed, or be secured to be paid, given, assigned, or conveyed to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk, or servant, or both the money and value of such other matter or thing, shall not amount to 30*l.*** | 0 | 15 | 0 |
| **If the same shall amount to 30*l.* and not amount to 50*l.*** | 1 | 10 | 0 |
| **If the same shall amount to 50*l.* and not amount to 100*l.*** | 2 | 10 | 0 |
| **If the same shall amount to 100*l.* and not amount to 200*l.*** | 5 | 0 | 0 |
| **If the same shall amount to 200*l.* and not amount to 300*l.*** | 10 | 0 | 0 |
| **If the same shall amount to 300*l.* and not amount to 400*l.*** | 15 | 0 | 0 |
| **If the same shall amount to 400*l.* and not amount to 500*l.*** | 20 | 0 | 0 |
| **If the same shall amount to 500*l.* and not amount to 600*l.*** | 25 | 0 | 0 |
| **If the same shall amount to 600*l.* and not amount to 800*l.*** | 30 | 0 | 0 |

| | *L.* | *s.* | *d.* |
|---|---|---|---|
| Of the *stamps*, | | | |
| If the same shall amount to 800*l.* and not amount to 1000*l.* | 40 | 0 | 0 |
| And if the same shall amount to 1000*l.* or upwards | 50 | 0 | 0 |
| And where there shall be no such consideration as aforesaid, moving to the master or mistress if the indenture or other instrument shall not contain more than 1080 words | 0 | 15 | 0 |
| And if the same shall contain more than that quantity | 1 | 10 | 0 |

Apprenticeship and clerkship.—Indenture or other instrument, containing the covenants, articles, or agreements, for or relating to the service of any such apprentice, clerk, or servant as aforesaid, who shall be put or placed to or with a new master or mistress either by assignment or turnover, or upon the death, absence, or incapacity of the former master or mistress, or otherwise;

| | | | | |
|---|---|---|---|---|
| Where there shall be any such valuable consideration as aforesaid, moving to the new master or mistress, exclusive of any part of the consideration to the former master or mistress, which may be returned, or given, or transferred to the new master or mistress | | | | *Such and the like duty in proportion to the amount or value of such new consideration only as is before charged on any original indenture of apprenticeship.* |
| And where there shall be no such new consideration; if the indenture or other instrument shall not contain more than 1080 words | 0 | 15 | 0 | |
| And if the same shall contain more than that quantity | 1 | 10 | 0 | |

And where there shall be duplicates, or two

Of the *stamps.*

L. s. d.

parts, of any such indenture or other instrument, relating to any such apprentice, clerk, or servant as aforesaid; each part shall be charged with the duty before mentioned, in all cases where the same shall not exceed thirty shillings; and where the same shall exceed that sum, only one part shall be charged with the said *ad valorem* duty, or duty in proportion to the consideration, and the other part shall be charged with a duty of..... 1 10 0

Note.—And the part, bearing the *ad valorem* or higher duty, shall belong to and be kept by the apprentice, clerk, or servant, or some person on his or her behalf, upon his or her being first placed out; and in case of any subsequent placing out, by assignment or otherwise, the part bearing the *ad valorem* duty on that occasion (if any) shall belong to and be kept by the former master or mistress, or his or her representatives, or by the apprentice, clerk, or servant, or some person on his or her behalf; and in each of the said cases the other part, bearing the lower duty hereby charged thereon, shall belong to and be kept by the original master or mistress, or the new master or mistress as the case may be; and the same shall be respectively received in evidence accordingly.

Exemptions from the preceding and all other stamp duties.

Indentures or other instruments for placing out poor children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to the Act of the 23d year of his Majesty reign, for the further regulation of parish apprentices.

And all assignments of such poor apprentices;

Of the *stamps*.

**provided there shall be no such valuable consideration as aforesaid, given to the new master or mistress, other than what may have been, or shall be given by any parish or township, or by any public charity.**

The 2nd section of this statute and the 8th section of the prior Statute 44 Geo. 3. c. 98. enact, that the previous regulation with respect to the mode of enforcing payment of the duties on indentures of apprenticeship, &c. shall continue in force. Hence it is necessary to refer to the Statute 8 Ann. c. 9. which contains several regulations, some of which are still in force (*o*).

" By sect. 35. The full sum received or con- Sect. 35.
" tracted for, is to be inserted in words at length,
" in the indenture or writing containing the
" covenants, &c. relating to the service, or the
" master or mistress shall forfeit double the
" sum, and the instrument shall bear date upon
" the day of the execution."

" Indentures signed in London, Westminster, Sect. 36.
" or within the bills of mortality, shall be stamped
" within one month after date."

" Every indenture entered elsewhere in Great Sect. 37.
" Britain, shall be either stamped within two
" months, or brought within that to time to some
" collector or officer, appointed for the manage-
" ment of these duties, who shall endorse a receipt
" for the duty paid, in words at length, bearing
" date on the day of the payment."

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(*o*) As the stamp duty is now to be paid *before* the execution of the indentures, those enactments relating to the time of payment are not in force.

Of the *stamps*. Sect. 38.

" By sect. 38. where the endorsement is made " within fifty miles from the bills of mortality, the " indenture shall be stamped within three, and " if at a greater distance, within six months after " the date, or making thereof."

Sect. 39.

" By sect. 39. all such indentures or writings, " as aforesaid, wherein shall not be truly inserted " and written the full sum and sums of money " received, with, or in relation to such clerk, " apprentice, or servant as aforesaid, or whereupon " the duties payable by this act shall not be duly " paid, or lawfully tendered, or which shall not " be stamped, or lawfully tendered to be stamped, " according to the tenor and true meaning of this " act, within the respective times herein for that " purpose severally and respectively limited, shall " be void, and not available in any court or place, " or to any purpose whatsoever; and the clerk, or " servant whom the same shall concern or relate " to, shall in such case be utterly incapable of " being free of any city, town, corporation, or " company, and of following or exercising the " intended profession, trade, or employment, any " charter, law, or custom to the contrary notwith- " standing."

Sect. 45.

" Sect. 45. Where any thing or things, not " being lawful money of Great Britain, shall " directly or indirectly be given, assigned, con- " veyed, delivered, contracted for, or secured, to " or for the use or benefit of any master or " mistress, with or in respect of any such clerk, " apprentice, or servant, for whom a duty is

" chargeable by this act; the duties hereby Of the *stamps.*
" granted and last-mentioned shall be answered
" and paid for the full value or values of such
" thing or things, and the same duties for the
" said values shall be secured and answered in
" the same manner and form, and under the
" like pains, penalties, forfeitures, and incapa-
" cities, as are before in this act provided for
" securing the said rates upon moneys given or
" paid, or agreed to be given or paid, with such
" clerks, apprentices, or servants as aforesaid."

Upon this act it has been decided that the premium or remuneration, subjecting the master to the payment of the duty, must be a benefit reserved for *him,* and that such stipulations as are solely for the use or benefit of the apprentice do not subject the master to the payment of the duty (*p*). And consequently if the friends of an apprentice covenant to maintain him with clothes, this is not such a benefit as is liable to the duty imposed by this act (*q*). And a master stipulating for 4*d.* out of every shilling of the earnings of his apprentice is no benefit to him within the meaning of the act, he being by law entitled to the whole (*r*); and upon the clause requiring the full sum, &c. to be truly inserted in the indenture, it has been held that the statement of a greater sum than was actually received constitutes no objection (*s*). There is no mode of evading the

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(*p*) 4 Term Rep. 732.—1 East. 601; and see 2 Stra. 1132. —3 Term R. 515.

(*q*) 4 Term Rep. 732.

(*r*) 1 East. 607.

(*s*) 5 East. 309.

Of the *stamps*. provisions relative to the duty, and therefore in the case of Jackson *v.* Warwick (*t*), it was held that an action could not be maintained by the plaintiff on a note given to him by the defendant, as an apprentice fee, with his son, who was to be bound to the plaintiff, it appearing that the indenture executed, was void by the Stat. 8 Ann. c. 9. for want of insertion of such premium therein, and a proper stamp in respect of the same, although the plaintiff did, in fact, maintain the apprentice for some time, and until he absconded, and Lord Kenyon said, "The note was given in consideration of the relation of apprenticeship, which these parties supposed was to be created between the defendant's son and the plaintiff, which relation, it now appears, never did exist between them; and therefore the consideration for the note wholly fails. By the Statute of Ann, the duty is laid upon the master in consideration of the premium received by him; and therefore he ought to have taken care that the consideration was invested in the indenture, and that it was properly stamped, the time for doing which is now expired. But be that as it may, we can only look to the consideration at the time of bringing the action; and at that time it appears that the indenture was not stamped."

Although the want of the stamp is a fatal objection, and while it continues renders the indenture void and unavailable in evidence, either in an action or for the purpose of gaining a settlement (*u*),

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(*t*) 7 Term Rep. 121. —Cald. 491.—1 Bott. 541.—
(*u*) Burr. Sett. Case, 236. 2 Bott. 381.

yet the defect may be cured by getting the instrument properly stamped, which may be done by paying the duty, together with a penalty for neglecting to have it done within the time limited by the legislature. The 48 Geo. 3. c. 149. s. 2. makes the 24th section of the 44th Geo. 3. c. 98. applicable, which allows the indenture to be stamped within a year, even without payment of a penalty, where the omission is attributable to accident or inadvertency, or to urgent necessity, or unavoidable circumstances, and the 37 Geo. 3. c. 136. section 2. (*x*), which appears to be still in force, allows deeds at any time to be stamped, on payment of ten pounds penalty and the duty. Besides these general provisions, the Statute 9 Ann. c. 21. and subsequent statutes, subject masters to penalties for neglecting to pay the duty, and give the apprentice time to get his indentures stamped under particular circumstances and upon certain conditions, which, as they are declared by the 48 Geo. 3. c. 149. s. 2. to be still in force, will be proper here to notice. Of the *stamps*.

By the 9 Ann. c. 21. if the master shall neglect to pay the duties within the time limited, he shall forfeit 50*l*. half to the king, and half with full costs to him who shall sue. (S. 66.) Penalty on non-payment of duties.

And by the 18 G. 2. c. 22. if he shall neglect to pay the same as aforesaid, he shall, besides all other penalties, forfeit double duty. (S. 23. 24.)

And by the 20 G. 2. c. 45. if any master, having forfeited the double duty, shall pay the same, and

(*x*) See also 43 Geo. 3. c. 127.

Penalty on non-payment of duties.

tender the indenture to be stamped, within two years after the termination of the apprenticeship, and before suit hath been commenced for the penalties, the indenture shall be valid, and the penalties discharged. (S. 5.)

And if after the master shall have forfeited the double duty, the apprentice shall in the presence of, or by writing under his hand, signed in the presence of one witness, require his master to pay the same, and the master shall not do it in three months, and such apprentice shall at any time within two years after the determination of his apprenticeship, pay the double duty, he may in three months after such payment demand of his master double the sum contracted for in the indenture, and if not paid in three months after, may recover the same by action at law, with full costs. And the apprentice immediately after payment of the said double duties (if his apprenticeship shall not be then expired) and signifying by writing under his hand, that he desires to be discharged from his apprenticeship, shall be discharged accordingly, and shall have the same benefit of the time he hath served as he would have had in case he had been assigned, or turned over to a new master. (S. 6, 7.)

And where any prosecution shall be commenced against the master for the penalties, if the apprentice shall pay the double duty at any time in two years after the end of his apprenticeship, he may thereupon exercise his trade, and the indenture shall be valid, and may be given in evidence. (S. 8.)

It should seem also, that independently of these

regulations, if any action were brought by an apprentice against his master for breach of covenant, the former might have a rule nisi of the court, for the defendant to produce the indenture before the commissioners of the stamp-office, to be stamped, and also to give the plaintiff a copy of it in order that he may declare thereon (*y*). There is frequently an indemnity act passed, similar to the 42 Geo. 3. c. 23. s. 7. enacting, that on payment before a named day, of double the duty, the indenture may be stamped, and shall be good to all intents, as if duly stamped in the first instance, and indemnifying the master from penalties when no prosecution has been commenced.

Penalty on non-payment of duties.

We have seen, as far as regards the stamp duty, no duplicate is necessary (*z*), nor, independently of that regulation, is any counterpart absolutely necessary (*a*); and notwithstanding the enactment in the 8 and 9 Wm. 3. c. 5. a pauper was held well settled under indentures that were unexecuted by the master, and of which there was no counterpart (*b*). But it is prudent to have a counterpart, and in the case of an apprentice to the sea-service, a counterpart is required to be executed by 2 & 3 Ann. c. 6. s. 11.

Counterpart.

It is necessary, according to the *custom* of some places, that the indenture should be enrolled; as in *London*, if the indenture be not enrolled before the chamberlain, within a year, upon a petition to the mayor and aldermen, a *scire facias* may be issued

Of the enrolment of the indenture.

(*y*) Tidd. Prac. 4th edit. 431. 525.—Abbott on Shipping, 389.

(*z*) Ante, 52,3.

(*a*) Burn. J. tit. Apprentice, III. page 96.

(*b*) Caldecot. p. 31.—2 Bott. 381.

Of the enrolment of the indenture.

to the master, to shew cause why the indenture has not been enrolled, and if it was through the master's default, the apprentice may sue out his indenture and be discharged; but it is otherwise, if it was through the default of the apprentice, as if he could not come to present himself before the chamberlain, &c. for they cannot be enrolled unless the apprentice be in court and acknowledge them (*c*). However, it is said, that if the apprentice refuse to appear to have the indenture enrolled, the master may record the indenture, which will be tantamount (*d*). If the indenture be enrolled, then in an action by the master against the apprentice, it will not be necessary to prove the execution of the deed by the defendant, but otherwise it will (*e*).

But it has been held that the custom of London that an infant who binds himself apprentice, shall be liable to be sued, does not extend to an infant bound to a waterman, because the Company of Watermen are but a voluntary society, and being free of that does not make one free of London (*f*). The 5th Eliz. c. 5. s. 12. directs that where persons bind themselves apprentice to masters in the seafaring line, their indentures shall be enrolled in the next corporate town (*g*).

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(*c*) Bac. Ab. Master and Servant, A.—2 Rol. Rep. 305.—305.—1 Mod. 271.—Palm. 361.—Com. Dig. London, N. 2.—1 Stra. 663.—2 Bos. & Pul. 98.

(*d*) Priv. Lond. 305.—Com. Dig. London, N. 2.

(*e*) Skin. 579. See a certificate relating to an enrolment of an apprentice, Vol. 3. Lord Bacon's Works, 4to. 353.

(*f*) 6 Mod. 69.—Bac. Ab. Apprentice, A.

(*g*) 3 Lev. 389.—But an omission will not prejudice in regard to a settlement, Burr, S. C. 586.—1 Bott. 546.

When, by the constitution of a corporation, the indenture ought by custom to be *enrolled* within a specified time from the date, the Court of King's Bench will by mandamus, compel the proper officer to enrol it, unless it appear that the apprentice was not bound according to the constitution of the corporation (*h*). With a view to securing the due payment of the duty on apprenticeship premiums, it was enacted by the 5 Geo. 3. c. 46. s. 18. that the chamberlain and other proper officer of every city, &c. where any apprentice obtains his freedom by servitude, shall enrol the name of every apprentice who shall be placed out within such city, and the name of the master and mistress, the apprentice fee, the trade, and the dates of the indenture, on pain of twenty pounds; but the omission to enrol the indenture cannot be taken advantage of by the defendant in an action against a third person (*i*).

Of the enrolment of the indenture.

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(*h*) 2 Term Rep. 2. and see Peakes cases, 159. where Lord Kenyon alluded to such a custom.

(*i*) 6 Mod. 69.

# CHAPTER III.

## OF THE SERVICE UNDER THE INDENTURE OF APPRENTICESHIP—OF THE RIGHTS AND LIABILITIES OF THE MASTER AND APPRENTICE—OF ASSIGNING AND TURNING OVER AN APPRENTICE—AND OF THE DETERMINATION OF THE APPRENTICESHIP.

IN this chapter we will consider the service of the apprentice under the indenture—The respective rights and liabilities of the master and apprentice—The assignment and turning over of the apprentice, and the modes on which the contract may be dissolved.

### I. OF THE SERVICE UNDER THE INDENTURE, AND RIGHTS AND LIABILITIES OF THE MASTER AND APPRENTICE.

Service under the indenture.

The apprentice must *serve* in pursuance of the indenture during the whole term of seven years, or he will not be entitled to set up in trade; and to acquire a settlement he must at least serve forty days, in conformity to the covenants in the indenture, and where a bye-law requires a service within a borough to entitle an apprentice to his freedom,

it must be strictly observed by the apprentice, and therefore in the King *v.* Marshall (*a*), the Court refused to grant a mandamus to a town clerk to enrol the indenture of an apprentice, because he had not served within a town corporate according to a bye law of the corporation, but elsewhere, and consequently could not obtain the freedom of the town; and though we have seen that a *parish* apprentice may acquire a settlement by serving a second master, to whom he has been assigned, with the consent of the first, it would be otherwise, if, instead of an assignment, a fresh indenture were executed (*b*). Illness or other reasonable cause, may however excuse a strict service in pursuance of the indenture; thus in the King *v.* The Inhabitants of Stratford upon Avon (*c*), Lord Ellenborough said, "The facts stated, leave no doubts that there was a service to the master by the apprentice, while he lodged with his mother in the adjoining parish. He went to lodge there indeed, in order to get cured, in consequence of an arrangement between the master and his mother; but he continued to serve his master every day, and though he could not work at the trade himself, yet he performed other service, and he might attend the work and learn the trade of his master, he must therefore be considered as still in the service of his master, as an apprentice, while he lodged with his mother. If the mother had lived more remote from the master's house, so that he could not have

Service under the indenture.

(*a*) 2 Term Rep. 2.
(*b*) 11 East. 95.
(*c*) 11 East. 179.

Service under the indenture.

served his master while he resided with his mother, for the purpose of cure, that would have altered the case, and likened it to The King *v.* Barnby in the Marsh, there there was no service of the master; but here the service to the master continued, and therefore the apprentice gained a settlement by the last forty days residence in the parish where he lodged with his mother. The Statute 5 Eliz. c. 4. s. 31. requires, that a person shall have been brought up or served as an apprentice for seven years, before he can set up in trade, but the constructions upon it which will hereafter be noticed, have made it sufficient for this purpose if a person has in any way followed the trade for that time *d*).

Rights and liabilities of the master.

The master, during the term of the apprenticeship, has an absolute and exclusive right to the service of his apprentice, and if an apprentice, whose master has not received ten pounds premium, runs away, he is bound by the Statute 6 Geo. 3. c. 25. to complete the term of his apprenticeship at any time within seven years after the expiration of it. If the indenture be valid, and any person entice the apprentice away, or harbour him, the master may support an action against the party (*e*). Thus in Eades *v.* Vandeput (*f*), it was held, that the master of an apprentice might support an action against the captain of a man of war to recover wages for the service of

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(*d*) 2 Wils. 168.—1 Bla. Rep. 233.

(*e*) See cases collected in Bacon. Ab. Master and Servant.

(*f*) 5 East. 39.

his apprentice, the captain having detained him after notice of his being such apprentice; and in a recent case (*g*), it was decided, that the master of an apprentice who has been seduced from his service to work for another person, may wave his action for the tort, and bring an action of *indebitatus assumpsit* for work and labour done by his apprentice, against the person who tortiously employed him. And though the Court will not at the prayer of the master, grant a habeas corpus to bring up an apprentice impressed, he being willing to enter into the King's service, because the writ of habeas corpus is for the protection of the personal liberty of the subject (*h*); yet the Lord Chief Justice may issue a warrant to bring him up on the application either of the master or the apprentice (*i*). No indictment however can be sustained for enticing away an apprentice (*k*). If the deed be defective, on account of its not being indented when necessary, it has been decided that an action on the case cannot be supported against a person for enticing away or harbouring the infant as an apprentice (*l*). And if the indentures be voidable on account of the binding being for less than seven years, and the apprentice has formally signified his determination to vacate the binding, and has afterwards gone into the service of another, it should seem that no action could

Rights and liabilities of the master.

(*g*) 1 Taunt. 112.; but see Co. Litt. 117. a. note 1.

(*h*) 7 Term Rep. 745.—5 East. 38.—3 Smith. 369, 370.

(*i*) 7 Term Rep. 745.—

queræ 3 Smith. 370,1.

(*k*) Ld. Raym. 1115.—6 Mod. 183.

(*l*) 1 Sess. Car. 222.—1 Bott. 523.

Rights and liabilities of the master.

be supported for harbouring him. But if he has surreptitiously and without previous notice run away and gone into the employ of another, it has been held, that the person receiving may be sued for harbouring him (*m*). And though the indenture may be thus voidable by the apprentice, on account of the binding being for less than seven years, yet an action might be supported against any one that entices him away (*n*). In an action of this nature, it must be proved, that the defendant knew that the party was an apprentice (*o*).

If the apprentice absent himself, or neglect his duty, the master may support an action of covenant against the parent or other person, who has by the deed covenanted for the due service (*p*); but there is no remedy *by action* against the apprentice himself, by the common or statute law (*q*); though by the custom of London, an infant is liable to be sued in any Court for a breach of his covenant (*r*). In ordinary cases the only course is, to resort to the magistrates to compel the performance of his duty in the manner presently stated. If, however, the indentures be void or voidable, on account of the binding being for less than seven years, no action can be supported upon the indenture, or any other security against the person

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(*m*) 6 Term Rep. 652.
(*n*) F. N. B. 168. D. and n. c.—6 Term Rep. 652.—7 Term Rep. 310. 314.
(*o*) Peake's L. E. 334. 2d. ed.
(*p*) Dougl. 518.—8 Mod. 190.
(*q*) Cro. Car. 179. 19 vol. MS. 110.
(*r*) Moore. 135.

covenanting for the service of the apprentice (*s*), though the magistrates would have jurisdiction over the apprentice himself, if he surreptitiously and without previous notice abscond from the service(*t*). Rights and liabilities of the master.

As incidental to the right of the master to the service of his apprentice, he is entitled to all the earnings and gains which an apprentice who runs away may acquire by his labour, either in the service of another, or in employment on his own account. Upon this subject there is a very learned note of Mr. Hargrave, in Co. Litt. 117. a. who observing upon the maxim, that whatever a slave or villein acquires belongs to his lord, states that the rule holds, *in some degree*, in respect to *apprentices* and *servants*, particularly the former; though with a great difference in point of extent and application. All acquisitions of property, real and personal, made by the villein, in whatever way arising, with no other exception than what is allowed of, to prevent prejudice to third persons, belonged to his lord; because an incapacity to acquire any thing for his own benefit was one of the harsh characteristics of the villein's condition. But the relation of the apprentice and servant to his master, is made mild and limited; for it only imports, that the master shall be entitled to their personal labour during the term stipulated, either in a particular way, or generally, according to the nature of the service or apprenticeship. Conse-

(*s*) 1 Anstruther. 256.—6 Esp. Rep. 8. and ante, 33.

(*t*) Cald. 26.—1 Bott. 530. 6 Term Rep. 652. ante, 33.

Rights and liabilities of the master.

quently the master cannot claim any *other acquisitions* than such as are *the result of that labour*. What the apprentice or servant earns by his labour, whilst he remains with the master, or is actually working for him, falls so clearly within this principle, that there can be no room for doubt. Nor can there be any, where the apprentice or servant is employed by another person with the knowledge and consent of the master, without any circumstances indicating a waiver of their earnings. The books contain several adjudications founded upon this latter idea, most of them indeed relate to apprentices in the sea-faring way, whose wages and prize money, as seamen, though earned whilst in another service, have been recovered by those to whom they were bound; but the principle which governs them, seems to apply to apprentices and servants in general (*u*). Some of the cases go so far as to give the master a right to the wages or earnings, whether the service is performed by the apprentice, with or without the master's licence, and even though the earnings accrue in a trade or service *different* from that to which the apprentice is bound (*v*). But though the rule should be so large in respect to *apprentices*, Mr. Hargrave observes, "It may be doubted whether it is equally so in the case of other servants (*x*). There is a case in the reign of James the First, in which a judgment against the master appears to be principally found-

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(*u*) 6 Mod. 69.—12 Mod. 415.—Comb. 450.—1 Str. 582.—1 Barnard. 312.—1 Ves. 48. 83.

(*v*) 6 Mod. 69.—12 Mod. 83.—1 Ves. 83.

(*x*) Sed. vid. 1 Camp. 527.

ed on the want of his consent and privity to the retainer (*y*). Independently too of authority, the master's proper remedy in all cases, except those in which the servant is intentionally employed on his master's account, seems to be an action either against the employer for loss of service, if he knew of the first retainer, or against the servant himself for breach of his contract; such a case rather importing a master's right to damages for injuries sustained, by the consequences of the second retainer, than a right to the profits accruing from it (*z*). Rights and liabilities of the master.

In the case of Barber *v.* Dennis (*a*), the widow of a waterman, who, as was said, by the usage of Waterman's Hall, may take an apprentice, had her apprentice taken from her and put on board a Queen's ship, where he earned two tickets, which came to the defendant's hands, and for which the mistress brought trover. It was agreed, the action would well lie, if the apprentice were a legal apprentice; for, his possession would be that of his master, and whatever he earned, would go to his master. But it was objected, that this supposed apprentice was no legal apprentice pursuant to the Act of Elizabeth; and if he were not a legal apprentice, the plaintiff had no title. But Lord Ch. J. Holt said, he would understand him an apprentice, or servant *de facto*, and that would

(*y*) Cro. Jac. 653.—2 Roll. Rep. 269.

(*z*) But, in the case of an apprentice, the tort maybe waved. 1 Taunt. 112. ante, 65. and see 1 Camp. 527.

(*a*) 1 Salk. 98.—6 Mod. 69. S. C.—1 Camp. 527. in notes, see there observations on the case in Barr. S. C. 91.—2 Bott. 374.

Rights and liabilities of the master.

suffice against them being wrong doers. In the report in Salkeld, the word "servant" is not mentioned. And, indeed, an action could not have been brought for a servant's wages, either on board, or elsewhere: for a master cannot bring an action for the wages of his servant, though for those of an apprentice he may, because the time of the apprentice is the time of the master; and what is earned by the apprentice is considered as belonging to the master (*b*). In the recent case of Thomson *v.* Havelock (*c*), it was held, that if the master of a ship gave a part of his personal services to one who is not the owner, for a stipulated sum, and the latter pay this into the hands of the owner, the master cannot recover it from him. And Lord Ellenborough said, "Is it to be contended, that a servant who has engaged to devote the whole of his time and his attention to my concerns, may hire out his services, or part of them, to another? It would have been a different thing if the owner had been suing for this money; but I am clearly of opinion, that at all events, the present plaintiff has no right to it. Under this contract he must have been taken from superintending the defendant's ship, and I do not know how far it might go, if such earnings were recoverable in a court of justice. No man should be allowed to have an interest against his duty. I will assume that the plaintiff obtained as high a freight as possible for his owners, and that his services to

(*b*) Per Lord Hardwicke, in Barr. S.C. 91. and see Co. Lit. 117. a. 1.; but see 1 Camp. 527.

(*c*) 1 Camp. 527. and see 1 Ves. 48.

government were meritorious, still there would be no security in any department of life or business, if servants could legally let themselves out, in whole or in part. My opinion upon the subject is quite decisive; if it be doubted, I beg that a bill of exceptions may be tendered. Whatever difficulty there might be in the master's recovering the earnings of his servants, it seems established that he may retain them, when once paid into his hands, as he is equitably entitled to them, and his right can least of all be controverted by his servant (*d*)." Rights and liabilities of the master.

Where the property acquired by the apprentice is some specific chattel, the remedy we have seen is trover (*e*). Where it is money, assumpsit for money had and received will lie (*f*); and where wages, or other remuneration are claimed for the personal services of the apprentice, the form of action may be assumpsit for work and labour (*g*). In either of these actions the execution of the indenture must be proved, or that it was enrolled (*h*). A court of equity, will not, in general, relieve against the claim of the master for prize-money, however large, acquired by an apprentice who has deserted his service; but Lord Hardwicke said, "that if a case came before him in equity, where the master, instead of instructing his apprentice in the particular business his parents intended, encouraged and induced him to go to sea, and to a different course of life, he should incline

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(*d*) 1 Campb. 529. in notes.

(*e*) Ante, 69.

(*f*) Skin. 579.

(*g*) 1 Taunt. 112.—Cro. Jac. 653.

(*h*) Skin. 579.

Rights and liabilities of the master.

to relieve the apprentice against the master's legal right (*i*). It is observed by Mr. Hargrave (*k*), that in the 31 Geo. 2. c. 10. one object of which is to regulate the pay of seamen in the royal navy, there is a provision, that in particular cases the master shall not be entitled to the wages of his apprentice, and that from the 17th section of the 2 and 3 Ann. c. 6. it seems as if the framers of that law doubted whether the master of an apprentice, who goes into the royal navy, would be entitled to his wages without an express provision.

It has been held, that if a master licence his apprentice to leave him, he cannot recal that licence (*l*). But in order to constitute a legal excuse for an apprentice quitting the service, the licence must be by deed, unless otherwise stipulated in the indenture, it being a maxim of law, that a contract must be dissolved *eo ligamine quo ligatur* (*m*). It has been a common notion, that a verbal licence to depart, is sufficient but clearly it cannot constitute any defence at law to an action of covenant on the indenture (*n*); though if a bond be given, conditioned that a third person shall serve the obligee for seven years, it is a good plea that the obligee licenced him to depart, the third person himself not being bound (*o*). So if it be stipulated that the apprentice should not absent himself without leave, a parol licence might

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(*i*) 1 Ves. 48. and 83.

(*k*) Co. Litt. 117. a. n. 1.

(*l*) 6 Mod. 69.

(*m*) 1 Taunt. 430.—2 Saund. 47, 48. note 1.—3 Term Rep. 590.—8 Term Rep. 280.—2 Term Rep. 45.

(*n*) Year Book, 21 H. 6. case 18. p. 32.—6 Mod. 182. —2 Ld. Raym. 1117.

(*o*) Bro. Ab. tit. Licences. pl. 18.—Vin. Ab. Licence, B.

suffice (*p*); but as far as regards the law of settlement, there are cases which establish that the contract may be determined without actually cancelling the deed (*q*). Rights and liabilities of the master.

As incident to this right of the master to the service of his apprentice, he may justify a battery in his defence (*r*). He has also more authority over him than over a common servant, for he may legally correct his apprentice for negligence or other misbehaviour, provided it be done with moderation; whereas, if the master or his wife beat any other servant of full age, it is a good cause for departure (*s*). By the custom of London, a freeman may turn away an apprentice for gaming (*t*); but if an apprentice marries without the privity of his master, yet that will not justify his turning him away, but he must take his remedy on the covenant (*u*); nor can he turn him away on account of his being sick, or so lame as to be unable to work (*x*); and in most cases of gross misconduct, it is better for the master to apply to a justice of the peace, or the sessions, to discharge or punish the apprentice, than to take the law into his own hands. The master, however, has no power to send or take his apprentice out of the kingdom (*y*),

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(*p*) Co. Lit. 222. b. n. 2.

(*q*) 1 Nolan's Poor Laws, 350.

(*r*) 1 Bla. Com. 428.—Bac. Ab. Master and Servant, P.

(*s*) 1 Bla. Com. 428.—F. N. B. 168.—Hawkins. B. 1. c. 176.—Bac. Ab. Master and Servant, N.

(*t*) 2 Vern. 291.

(*u*) 2 Vern. 492.

(*x*) 1 Stra. 99.

(*y*) Hob. 134.—Bac. Ab. Master and Servant, E.

Rights and liabilities of the master.

nor can he even compel him to go to any part of the kingdom (*z*).

The *liability* of the master is in general pointed out by the terms of the deed, and relates to the instruction and finding necessary food and lodging for his apprentice. If he be guilty of non-observance of these duties, he is liable to an action of covenant, where he has duly executed the deed. And under the provisions of the 5 Eliz. c. 4. and 20 Geo. 2. c. 19. if he neglect to instruct, or shall misuse or evil entreat his apprentice, or the apprentice shall have just cause to complain, the justices, at sessions, may discharge the apprentice, and have a power of ordering a restitution of the premium (*a*). And by 20 Geo. 2. c. 19. two justices of the peace are authorized, in the case of a *parish* apprentice, or any other, where more than 5*l.* has *not* been paid as a premium, to *discharge* the apprentice in case the master has been guilty of any misusage, refusal of necessary provisions, cruelty, or other ill treatment towards his apprentice. But, as observed in 1 Saund. 316. the justices cannot administer *punishment to masters* for THEIR faults, but only DISCHARGE their apprentices. There is no doubt, however, that independently of the terms of the indenture, and of the power of the magistrates, if the master, without cause, beat, or ill use his apprentice, he may support an action against his master; and an indictment at common law may be supported against a master for not pro-

(*z*) 6 Term Rep. 454. —1 Strange. 99.
(*a*) See 1 Saund. 313. n. 3.

viding sufficient food for an apprentice or servant of tender years, and under his dominion and controul, whereby the infant became sick(*b*). Rights and liabilities of the master.

With respect to the *rights and liability of the apprentice himself*, they may be in a great measure collected from the preceding observations. He has a right to sue his master, in case of non-observance of any of the express covenants in the deed. If he duly serve his apprenticeship, he becomes entitled to set up in trade, under the provisions of 5 Eliz. c. 4. If he be misused, we have seen that, by the intervention of justices of the peace, he may be discharged from his apprenticeship. If he be unwell, and there be any probability of his recovery, so as to be able at all to attend to his employment, he has a right to insist on his master providing for him; for the master takes him better for worse, and is to provide for him in sickness and in health (*c*). But where a boy, who had been put out as a parish apprentice, plainly appeared to be an *ideot*, incapable of learning his trade, the Court confirmed an order of sessions, dicharging his master of him, for it would be hard upon the master to keep one who could do him no service, while the parish, who are bound to support the poor, should go free (*d*). With regard to his *liability*, whilst he is under age, he is bound to perform the stipulations in the indenture, and he is liable to be sued for any tort he may commit, unconnected with the contract (*e*), and to an action Rights and liabilities of the apprentice.

(*b*) 2 Campb. 650.
(*c*) 1 Str. 99.—1 Bott. 574.
(*d*) Skinner. 114.—1 Bott. 571.—Burr. S. C. 706.
(*e*) See 8 Term Rep. 335.

Rights and liabilities of the apprentice.

for money had and received, for money embezzled (*f*). But no *action* can be supported against him for the non-observance of his duty, unless he were bound apprentice in London, according to the particular custom there (*g*), and the only course is to resort to the magistrates, who, by the 5th Eliz. c. 4. may either discharge him from the apprenticeship, or may cause such due correction and punishment to be ministered to him, as they shall think fit. It was at one time doubted whether the justices had power to discharge the apprentice, where the application was on behalf of the master; but their authority was fully established in the case of Hawksworth and Hillary (*h*).

At common law, an apprentice, without any regard to age, might be guilty of felony, in feloniously taking away the goods of his master, though they were goods under his charge, as a shepherd, &c.; and may, at this day, for any such offence, be indicted as for a felony at common law (*i*); but at common law, if a man had delivered goods to his apprentice, to keep or carry for him, and carried them away *animo furandi*, this was considered only a breach of trust, but not felony. This, however, is altered by some subsequent statutes, as to apprentices above eighteen years old, and by others of above fifteen (*j*). And if an apprentice, pretending himself not to be an apprentice, enlist in the army

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(*f*) Peake's Cas. 223. semb.
(*g*) Cro Car. 179.—Moore, 435.—Ante, 25.
(*h*) 1 Saund. 314.
(*i*) Hales. H. P.C. 505. 666.
(*j*) 21 Hen. 8. c. 7.—27 Hen. 8. c. 17.—12 Ann. c. 7.—Bac. Ab. Master and Servant, M. 2. and see 39 Geo. 3. c. 85.

and obtain money on that account, he may be indicted as a cheat (*h*). Rights and liabilities of the apprentice.

## II. OF ASSIGNING AND TURNING OVER AN APPRENTICE.

As the placing out an apprentice to a particular person, arises from an esteem and good opinion of the party to whom he is committed, that he will not only instruct him in his trade or calling, but will also be careful of his health and security, and therefore the common law has considered it such a personal *trust or confidence*, that the master cannot assign or transfer it over to another (*l*). And it is said, that if the master assign his apprentice, and the latter consent to such assignment, yet this will not make him an apprentice to the assignee, under the 5 Eliz. c. 4. (*m*); so that it should seem questionable, whether the new master, for employing such apprentice under the assignment, would not be liable to an action on the statute, for setting to work a person who had not served nor was serving an apprenticeship. The infant is not liable to be proceeded against, either criminally or civilly, for not serving the party to whom he has been assigned (*n*). But by the custom of London, a freeman may turn over his apprentice to another Assigning and turning over an apprentice.

(*k*) 2 East. P. C. 822.
(*l*) Hob. 134.—Bac. Ab. Master and Servant, E. — 1 Bott. 584.—Burn's Justice, Apprentice, XI.—Dougl. 71.
(*m*) Dalton. c. 58.—1 Bott. 579.—1 Wils. 96.
(*n*) 1 Bott. 580.—2 Keb. 519.

Assigning and turning over an apprentice.

freeman, and such master shall have the same benefit of the apprentice's covenant, as shall the apprentice of the covenants on the part of the master, as if he had been originally bound to him (*o*). Even justices of the peace, who have power on complaint to *discharge* an apprentice, cannot turn him over to a fresh master, that being beyond their jurisdiction (*p*). It is, however, settled, that for the purpose of gaining a settlement, the service of an apprentice under an assignment (*q*), though not under a new indenture, whilst the first subsists, is sufficient (*r*); though Lord Kenyon said, "it would, perhaps, have been better to have confined the power of gaining a settlement to service by the original master, but the law is otherwise settled (*s*).

*Parish* apprentices, however, in case of the death of their master, or during his life, are assignable with the consent of two justices of the peace, by virtue of the 32 Geo. 3. c. 57. s. 7. (*s*). So an assignment to the sea-service is good by the act of parliament (*t*); and the stamp acts direct, that when the master has neglected paying the duty in due time, the apprentice, on paying it, shall have the benefit of the time during which he has served, as if he had been assigned or turned

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(*o*) March. 3.—Keb. 255.—Bac. Ab. Master and Servant, E.—Com. Dig. London.

(*p*) Bac. Ab. Master and Servant, E.—Comb. 321.—1 Stra. 48.—Salk. 66.

(*q*) 1 Nolan. 356. &c.—1 Bott. 582.

(*r*) 11 East. 95.

(*s*) 1 East. 62.—See cases 1 Nolan. 356, &c.—6 Term Rep. 454.

(*s*) See construction, 11 East. 97.

(*t*) 1 Burn's Justice, Apprentice, XI.

over (*u*). We have seen that the 48 Geo. 3. c. 149. regulates the stamp duty on an assignment, or turning over, or fresh binding of an apprentice (*x*). Assigning and turning over an apprentice.

## III. OF THE DISSOLUTION OF THE APPRENTICESHIP.

We have now to consider the modes in which the contract of apprenticeship may be *dissolved* or *determined*, and which may be by effluxion of time —or by the apprentice's coming of age—or by the bankruptcy of the master—or by death—or by consent or award—or by the interference of magistrates. Dissolution of the apprenticeship.

1st. The apprenticeship may determine by *effluxion of time*, viz. at the end of seven years, mentioned in the indenture, *or the apprentice* may, in some cases, determine the contract on his *coming of age*. We have seen that by some regulations relative to parish apprentices, they are not bound to serve after they are of age (*y*). In other cases also of voluntary bindings, though the apprentice himself may have executed the indenture, it has been considered that he is freed from all liability to serve the instant he comes of age; and in the case Ex parte Davis (*z*), Lord Kenyon said, "It 1st. Effluxion of time, or coming of age.

(*u*) 20 Geo. 2. c. 45. s. 7. c. 47.
(*x*) 6 Term Rep. 452. (*z*) 5 Term Rep. 715.
(*y*) Ante, 20.—18 Geo. 3.

1st. Effluxion of time, or coming of age.

is clear that the apprentice must be discharged; every indenture of an infant is voidable at his election, and in such cases the master must trust to the covenant of those who *engaged for the infant*. Where the binding is under the authority of an *act of parliament*, that does away the power of electing to vacate the indenture. But I know of no act which prohibits the party, in a case like the present, to make such election upon coming of age. According to the argument of the counsel against the rule, an infant who improvidently bound himself to the age of *fifty*, or upwards, would be bound to serve till that time, but it is impossible to support such a proposition. This apprentice ought not to have been bound longer than till she was twenty-one, and we ought now to discharge her;" the other judges concurred. It must, however, be observed that the 5 Eliz. c. 4. s. 36. enacts, "That no person who shall be of full age, shall be compellable to *enter* into any apprenticeship; yet the 26th and 28th sections appear to require that the apprenticeship shall not determine till the age of twenty-four; and the 13th section enacts, "That apprentices shall be bound for the years in the indenture contained;" and the 18 George 3. c. 47. which enacts, "That *parish* apprentices shall not be bound to serve after they are of age," does not extend to any other description of apprentices. It has been held, however, that the apprentice ought *regularly to declare his intention* to *annul the contract*, and not to absent himself

in a surreptitious manner (*a*). But this doctrine seems questionable, and in the case of Ex parte Gill (*b*) the Court observed, that if an apprentice, when brought before a magistrate, shew that he is of age, and that therefore he absented himself from his master's service, and they disregard such defence, and commit him, he has his remedy against them. However, from the same case it appears, that if the magistrates do convict such an apprentice, and commit him to prison without disclosing, on the face of the conviction, the circumstance of his being of age, the Court of King's Bench have no power to discharge him out of custody upon his being brought up under a writ of habeas corpus; so that the party in such case could only bring his action for the false imprisonment; and therefore an apprentice, who, when he comes of age, is desirous of vacating the contract, should, before he absents himself from the service, give a reasonable notice of his intention to do so. If, however, the apprentice wishes to acquire his freedom in a corporate town, or to be enabled to set up or be legally employed in any trade, he must duly serve out the term of his apprenticeship. It is clear that as an adult is bound by his contract with an infant (*c*), the master himself cannot, without the concurrence of the apprentice, put an end to the apprenticeship on account of the apprentice having come of age; and if a person of full age bind himself ap-

1st. Effluxion of time, or coming of age.

(*a*) See the cases, 1 Nolan. 348, 9.

(*b*) 7 East. 376.

(*c*) 2 Strange. 937, 8.

1st. Effluxion of time, &c.

prentice for seven years, he could not legally vacate his contract (*d*).

2dly. Bankruptcy and insolvency.

2dly. The *second* mode by which the apprenticeship may be effected is by the *bankruptcy or insolvency* of the master. This, however, being attributable either to the fault or want of care in the master, does not release him from his obligation to instruct and maintain the apprentice, and neither justifies him in turning away the apprentice, or the apprentice for absenting himself without leave (*e*); and consequently, if the apprentice leave his master he cannot gain a settlement by hiring and service to a fresh master (*f*). In Beawes Lex Mercatoria (*g*) it is said, that the commissioners may allow a gross sum out of the estate for binding the apprentice to another master, but that the Court alone can order him to be admitted a creditor; and that accordingly Lord Chancellors King, Talbot, and Hardwicke ordered an apprentice, whose master became a bankrupt, to be admitted as a creditor under the commission, on account of the apprentice fee received by the master, only for the remaining sum thereof, after deducting for the time he lived with the bankrupt. And in Ex parte Sandby (*h*), where the apprentice petitioned the Chancellor, shewing that the bankrupt was incapable of affording instruction, and that the petitioner was unable

(*d*) 9 East. 295.—3 Bos. and Pul. 69.

(*e*) 2 Lord Raym. 1352.—1 Strange. 582.—2 Bott. 402. S.C.

(*f*) Id. ibid.

(*g*) P. 562.

(*h*) 1 Atk. 149. see also 1 Atk. 260.—1 Mont. 120.

to bind himself apprentice, and would consequently lose much time, and therefore prayed that the assignees might be ordered to pay him a named proportion of the premium out of the effects come to their hands, and not oblige him to prove; though Lord Hardwicke was at first inclined to grant the petition, he, on consulting precedents ordered that the petitioner should only be admitted a creditor for such proportion; and it has even been questioned whether, as no demand existed before the bankruptcy, the apprentice is entitled in strictness to be admitted as a creditor (*i*); but it is stated, that as a case of compassion it has usually been *recommended* to allow a gross sum of the estate to put him out to another master (*k*). It is reported to have been decided, that if a trader, after having committed a secret act of bankruptcy, pay a premium with his son upon binding him apprentice, and the transaction is without fraud, the premium is not distributable under the commission; but the propriety of this decision seems very questionable (*l*). The master, notwithstanding he may obtain his certificate, will certainly continue liable to perform the covenants in the indenture.

2dly. Bankrupty and insolvency.

The third mode by which the apprenticeship may be determined is by *death*. Apprenticeship, being a personal trust between master and servant, is determined, at all events, by the death of the

3. Death.

(*i*) Cullen. 94, 5. n. 3.—1 Mont. 120. n. z. 149. 261.

(*k*) Cullen. 94, 5.—1 Atk. 21.—1 Montague. 307.

(*l*) 3 Levinz. 58.—Skynner,

3 Death. *apprentice*, and to some purposes by that of the master. If the master die the covenant to instruct is dispensed with, being a thing personal, but if the master has also covenanted to find him in meat, drink and clothes, and other necessaries during the time, it has been held, that his death does not dispense with this condition, but his executors are at common law bound to perform it, as far as they have assets (*m*). And by the custom of London, it is said, that in case of the master's dying, the executor must put the apprentice to another master of the same trade (*n*); and for the purposes of settlement it has been held, that the executor, or even a widow, before taking out administration, may continue the relation of master and apprentice (*o*). There is a legislative enactment relative to *parish* apprentices (*p*), which shews that the law is understood to be as above mentioned, and that though the agreement for service on the part of the apprentice in general is at an end, yet the covenant for *maintenance* on the part of the master, continues in force, so far as the master's assets will extend. The words of the recital are, " and whereas in the event of the death of the master, during the term of such apprenticeship, the *agreement* for service on the part of the apprentice *is at an end*, but the *covenant for maintenance*, on the part of the *master*, still

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(*m*) Sid. 216.—Keb. 761. 820.—Lev. 177.—1 Bott. 521.—Cro. Eliz. 553.—Carth. 231.—Salk. 66.

(*n*) Salk. 66. 201.—March. 3.—Keb. 250.—Bohun. Priv. Lond. 339, 340.

(*o*) 1 Nolan. 356.

(*p*) The Stat. 32 G. 3. c. 57.

continues in force, as far as the master's *assets* 3. Death.
*will extend, or doubts have arisen with respect thereto,* and in consequence thereof, such apprentices do frequently, on the death of their master, leave their master's house, and, after living in idleness, return again and become a burden on their master's effects, and so from time time as they think proper, which is attended with great inconvenience and hardship to the family and personal representatives of such master, and is at the same time an inducement to such apprentice to continue in a disorderly and idle course of life." And then it enacts, "That, in the case of *parish* apprentices and others with whom more than *5l.* premium has not been paid, the executors of the master may assign the apprentice to a fresh master." But there is an express provision by the 9th section, that this regulation shall not extend to any other apprenticeships; and consequently it would be adviseable in indentures of apprenticeship, where more than *5l.* premium is paid, to insert some clause, providing for the continuance after the death of the master (*q*), without which the executor will be liable (*r*). In some cases the Court of Chancery have interfered to compel the executors of the master to return a part of the premium (*s*).

4thly. The fourth mode is by mutual consent. 4. Consent.
At common law, and independently of the Statute

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(*q*) 1 Burn's Justice, 20 ed. 145.—See the form 1 Burn's Justice, 21 ed. 148.

(*r*) Salk. 66.

(*s*) Finch. Rep. 396. — 1 Bott. 563.— 1 Vern. 460.— Bac. Ab. Master and Servant, C. Post.

4. Consent. against Frauds, the parties may, by mutual consent, cancel a contract under seal, unless where an interest in real property has passed (*t*); but if the apprentice be an infant, his master cannot discharge the indentures by his consent alone (*u*); but it may be done by his father's consent, or that of any person having the legal superintendence of his minority (*x*). In the case of a parish apprentice under age, the indenture cannot be discharged by his consent though the father concur (*y*), as he is bound out by the parish officers under a special authority, they ought to be consulted, and give their consent to his discharge, otherwise the whole policy of the 43 Eliz. might be defeated (*z*); but such assent is unnecessary after he attains the age of twenty-one, at which time the master and apprentice may cancel the indentures by mutual agreement (*a*). But if an attempt be made to cancel them before that time, it is not rendered valid merely by the apprentice's coming of age, and the indentures continue in force, unless the parties enter into a new agreement (*b*). In order to *discharge* indentures, it is necessary, not only that the parties should agree to separate, but that the indentures should be *actually cancelled*, or given up, or at least something done which the

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(*t*) 6 East. 94. — 4 Cruise, 369.

(*u*) Burr. S. C. 441. — 2 Bott. 404.—6 Term Rep. 557. —1 Bott. 533.

(*x*) Burr. S. C. 274. — 2 Bott. 402.—Burr. S. C. 766. —2 Bott. 406.

(*y*) Cald. 126.—2 Bott. 408.

(*z*) Burr. S. C. 766.—2 Bott. 406.

(*a*) 2 Bott. 409.—1 Term Rep. 139.—Cald. 126.

(*b*) Burr. S. C. 441.—2 Bott. 420.

law considers as equivalent to shew that it was done animus cancellandi (*c*). And it seems as if they must be cancelled by the original master, and it cannot be done by a third person, whom the apprentice is serving with the consent of the first (*d*). 4. Consent.

Where the parties have *power to consent*, the indentures may be discharged, 1st. By formally *cancelling* them. 2nd. By *exchange*, or mutually delivering them up, and this either with an indorsement (*e*) or without, because the exchange of the indentures amounts either in law or in equity (and they are the same thing in this case) to a cancelling of them, and a determination of the apprenticeship under them (*f*). Lord Mansfield was of opinion, that it would have been more convenient if the Court had never gone further, than to inquire whether the indentures had been actually *cancelled* or *given* up (*g*). But it appears to be settled by several cases, that the apprenticeship may be discharged, although the master has retained the custody of his indentures, and they have existed undefaced (*h*).

5thly. An apprenticeship may also be put an end to by means of a reference and award, as appears from the case of Green v. Waring (*i*); and lastly, the contract may be determined by the ma- 5. By an award, or by justices of the peace.

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(*c*) 6 East. 89.—Burr. S. C. 562.—1 Bott. 611.

(*d*) 1 Bott. 613.—1 Nolan. 350.

(*e*) Burr. S. C. 250. — 2 Bott. 417.

(*f*) Burr. S.C. 274. 511.—1 Bott. 526.—2 Bott. 404.

(*g*) 1 Term Rep. 139.

(*h*) 1 Nolan. 351 to 355.

(*i*) 1 Bla. Rep. 475.

5. By an award, or by justices of the peace.

gistrates, in consequence of an application to one of them, founded on gross misconduct on the part of the master or of the apprentice; but as this is only a part of the general jurisdiction of justices of the peace over apprentices, given to them by statute, we will consider it in the next chapter.

# CHAP. IV.

## JURISDICTION OF JUSTICES OF THE PEACE AND THE SESSIONS, EITHER TO PUT AN END TO THE APPRENTICESHIP, OR TO PUNISH THE APPRENTICE, &c.

THE 5 Eliz. c. 4. s. 35. contains this singular provision it constitutes a single justice of the peace a *mediator* between the parties, and if they submit to his decision it will be binding; and it then enacts, that in case of nonconformity by the *master*, the justice of the peace cannot compound the matter with him and the apprentice; then the justice shall take bond from the master to appear at the next sessions, at which four at least of the justices shall, if they think meet, discharge the apprentice from his apprenticeship. So that the single magistrate has merely an authority to endeavour to settle the matter amicably between the parties; but in case of a disagreement by the master, the parties must resort to the sessions, who indeed may be applied to in the first instance (*a*). In the case of parish apprentices and others, with whom a greater premium than five pounds has not been paid, a power is given to *two* magistrates to discharge the apprenticeship, by 20 Geo. 2. c. 19. It was doubted originally, whether the power of discharge, given by 5 Eliz. c. 4. was not to be

(*a*) 1 Saund. 316. n. 4.

confined to apprentices in trade, specifically mentioned in that statute. But the law is now settled, that it extends to every description of apprentices (*b*), and this, though bound for a less term than seven years, where the apprentice surreptitiously absents himself from that service (*c*). We will now consider these provisions more in detail.

Any justice where the master dwells may adjust disputes between a master and his apprentice.

By 5 Eliz. c. 4. s. 35. "And if any master shall "misuse or evil entreat his apprentice, or the ap- "prentice shall have any just cause to complain, "or the apprentice do not his duty to his master, "then the master or apprentice being grieved, and "having cause to complain, shall repair unto one "justice of peace within the county, or to the "mayor or other head officer of the city, town "corporate, market town, or other place where "the said master dwelleth, who shall by his wis- "dom and discretion take such order and direc- "tion between the master and his apprentice, as "the equity of the cause shall require."

If the justice cannot adjust such dispute, he may bind the parties over to appear at the next sessions.

By 5 Eliz. c. 4. s. 35. "And if for want of good "conformity in the master, the justice of peace, "or the mayor or head officer cannot compound "and agree the matter between him and his ap- "prentice, then the justice, or the mayor or other "head officer, shall take bond of the master, to "appear at the next sessions then to be holden in "the county, or within the city, town corporate, "or market town, to be before the justices of the "said county, or the mayor or head officer of the

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(*b*) 1 Saund. 316. n. 3.—1 Stra. 663.—1 Nolan. 344.

(*c*) Ante, 33. 80.

" town corporate or market town, if the master
" dwell within any such."

By 5 Eliz. c. 4. s. 35. " And upon his appear- The sessions may by order under hand and seal discharge the apprentice from his indentures for a default in the master.
" ance, and hearing of the matter before the jus-
" tices, or the mayor or other head officer, if it be
" thought meet unto them to discharge the ap-
" prentice of his apprenticehood, then the justices,
" or four of them at least, whereof one to be of
" the *quorum*; or the mayor or head-officer, with
" the consent of three other of his brethren, or
" men of best reputation within the city, town
" corporate, or market town, shall have power by
" authority hereof, in writing under their hands
" and seals, to pronounce and declare that they
" have discharged the apprentice of his appren-
" ticehood, and the cause thereof; and the writ-
" ing so being made and inrolled by the clerk of
" the peace, or town clerk, amongst the records
" that he keepeth, shall be a sufficient discharge
" for the said apprentice against his master, his
" executors and administrators; the indenture of
" the said apprenticehood, or any law or custom
" to the contrary notwithstanding."

By 5 Eliz. c. 4. s. 35. " And if the default shall The sessions may punish an apprentice for misconduct.
" be found to be in the apprentice, then the jus-
" tices, or the mayor or other head officer, with
" the assistance aforesaid, shall cause such due
" correction and punishment to be ministered unto
" him, as by their wisdom and discretions shall be
" thought meet."

By 5 Eliz. c. 4. s. 47. " If any servant or ap- Justices of the peace, or mayors, &c.
" prentice of husbandry, or of any art, science,

may issue a *capias* to apprehend an apprentice who shall run away from his master, and may imprison him until he give security for his good behaviour.

" or occupation aforesaid, unlawfully depart (*d*)
" or flee into any other shire, it shall be lawful to
" the justices of the peace, and to the mayors,
" bailiffs, and other head officers of cities and
" towns corporate for the time being, justices of
" peace there, to make and grant writs of *capias*,
" so many and such as shall be needful, to be di-
" rected to the sheriffs of the counties, or to other
" head officers of the places whither such servants
" or apprentices shall so depart or flee, to take
" their bodies returnable before them at what
" time shall please them; so that if they come by
" such process that they be put in prison till they
" shall find sufficient surety well and honestly to
" serve their masters, mistresses, or dames, from
" whom they so departed or fled, acording to the
" order of the law (*e*).

Two justices of the place where the master dwells may, on the complaint of an apprentice for ill usage, &c. by his master, hear the parties, and discharge such apprentice from his indentures.

By 20 Geo. 2. c. 19. s. 3. " It shall and may
" be lawful to and for any two or more justices of
" the peace of the county, riding, city, liberty,
" town corporate, or place where such master or
" mistress shall inhabit, upon any complaint or
" application by any apprentice put out by *the*
" *parish*, or any other apprentice upon whose
" binding out no larger a sum than *five* pounds

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(*d*) See Rex *v.* Edwards, 7 Term Rep. 745.

(*e*) By 24 Geo. 2. c. 55. " If " a justice shall issue a warrant " against such person, and he " shall escape into another " shire, the constable, or other " person, on having the war- " rant indorsed by a justice of " such other shire, may arrest " him there, and carry him be- " fore a justice of such other " shire, if the offence is bail- " able, to find bail, or else " shall carry him back to a " justice in the shire from " whence the warrant did first " issue."

" of lawful *British* money was paid, touching or
" concerning any misusage, refusal, or necessary
" provision, cruelty, or other ill treatment of or
" towards such apprentice by his or her master or
" mistress, to summon such masters or mistresses
" to appear before such justices at a reasonable
" time to be named in such summons; and such
" justices shall and may examine into the matters
" of such complaints; and upon proof thereof
" made upon oath to their satisfaction, (whether
" the master or mistress be present or not, if ser-
" vice of the summons be also upon oath proved,)
" the said justices may discharge such apprentice
" by warrant or certificate under their hands and
" seals, for which warrant or certificate no fees
" shall be paid."

Two justices of the place where the master dwells may, on the complaint of an apprentice for ill usage, &c. by his master, hear the parties, and discharge such apprentice from his indentures.

By 20 Geo. 2. c. 19. s. 4. " It shall be lawful to
" and for such justices, upon application or com-
" plaint made, upon oath, by any master or mis-
" tress against any such apprentice, touching or
" concerning any misdemeanour, miscarriage, or
" ill behaviour, in such his or her service, (which
" oath such justices are hereby empowered to ad-
" minister), to hear, examine, and determine the
" same, and to punish the offender by commit-
" ment to the house of correction, there to re-
" main and be corrected, and held to hard labour
" for a reasonable time not exceeding *one calen-*
" *dar month* (*f*), or otherwise by discharging such
" apprentice in manner and form before men-
" tioned."

Two justices may on complaint of the master commit the apprentice for one month, or discharge the indentures.

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(*f*) Enlarged to *three* months by 32 Geo. 3. c. 57. 513.

Parties grieved may appeal to the next general quarter sessions, where the justices are empowered to hear, finally determine, and award costs.

By 20 Geo. 2. c. 19. s. 5. "Provided, that if "any person or persons shall think himself, her- "self, or themselves aggrieved by such determina- "tion, order, or warrant of such justice or justices "as aforesaid (save and except any order or com- "mitment), he, she, or they may appeal to the "next general quarter sessions of the peace to be "held for the county, riding, liberty, city, town "corporate, or place where such determination or "order shall be made; which said next general "quarter sessions is hereby empowered to hear and "finally determine the same, and to give and "award such COSTS to any of the respective per- "sons, *appellant* or *respondent*, as the said ses- "sions shall judge reasonable, not exceeding *forty* "*shillings*; the same to be levied by distress and "sale, in manner before mentioned (*g*)."

No *certiorari* to be allowed.

By 20 Geo. 2. c. 19. s. 6. and 7. "It is also "provided that no *certiorari* or other process shall "issue or be issuable to remove any proceedings "whatsoever had in pursuance of this act into any "of his majesty's courts of record at *Westminster*; "and that nothing in this act shall extend to the "*stannaries* of *Devon* and *Cornwall*."

Any one justice of the peace where

By 6 Geo. 3. c. 25. "If any apprentice (except "such whose master shall have received with such

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(*g*) This refers to the first clause in the act, the words of which are: "And in case of "refusal or nonpayment of "any sums so ordered, by the "space of one and twenty days "next after such determina- "tion, such justice and jus- "tices shall and may issue "forth his and their warrant "to levy the same by distress "and sale of the goods and "chattels, rendering the over- "plus to the owners, after pay- "ment of the charge of such "distress and sale."

" apprentice the sum of TEN POUNDS) shall absent
" himself from his master's service before the term
" of his apprenticeship shall be expired, every such
" apprentice shall, at any time or times thereafter,
" whenever he shall be found, be compelled to
" serve his said master for so long a time as he
" shall have so absented himself from such service,
" unless he shall make satisfaction to his master for
" he loss he shall have sustained by his absence
" from his service; and so from time to time, as
" often as any such apprentice shall, without leave
" of his master, absent himself from his service be-
" fore the term of his contract shall be fulfilled,
" and in case any such apprentice shall refuse to
" serve as hereby required, or to make such satis-
" faction to his master, such master may complain
" upon oath to any justice of the peace of the
" county or place, where he shall reside, which
" oath such justice is hereby empowered to ad-
" minister, and to issue a warrant under his hand
" and seal for apprehending any such apprentice;
" and such justice, upon hearing the complaint,
" may determine what satisfaction shall be made
" to such master by such apprentice; and in case
" such apprentice shall not give security to make
" such satisfaction according to such determina-
" tion, it shall and may be lawful for such justice
" to commit every such apprentice to the house
" of correction for any term not exceeding three
" months."

the master resides may, at any time, issue his warrant to apprehend any apprentice who has absented himself from his master's service, and cause such apprentice to serve or make satisfaction for the time he was absent; and, on refusal to give security so to do, may commit him for three months;

By 6 Geo. 3. c. 25. s. 3. " Provided that no ap-
" prentice shall be compelled to serve for any time

but such application must be made

within seven years after the expiration of the indenture.

" or term, or to make any satisfaction to any mas-
" ter, after the expiration of seven years next after
" the end of the term for which such apprentice
" shall have contracted to serve."

Parties grieved may appeal to the next general quarter sessions, giving notice to the justice, and entering into a recognizance as described; and the determination of THE SESSIONS shall be conclusive.

By 6 Geo. 3. c. 25. s. 5. " If any person shall
" think himself aggrieved by such determination,
" order, or warrant of any justice of the peace as
" aforesaid, except an order of commitment, every
" such person may appeal to the next general
" quarter sessions of the peace to be held for the
" county or place where such determination or
" order shall be made; such person giving *six days*
" *notice* of his intention of bringing such appeal,
" and of the cause and motive thereof, to such
" justice of the peace and the parties concerned,
" and entering into a recognizance within three
" days after such notice before some justice of
" the peace for such county or place, with suffi-
" cient surety conditioned to try such appeal at,
" and abide the order or judgment of, and pay
" such costs as shall be awarded by the justices at
" such quarter sessions; which said justices, at
" their said sessions, upon due proof of such no-
" tices being given, and of entering into such re-
" cognizances as aforesaid, shall, and are hereby
" directed to proceed in, hear, and determine the
" causes and matters of all such appeals, and there
" give such relief and COSTS to the parties appeal-
" ing or appealed against, as they, in their discre-
" tion, shall judge proper and reasonable; and
" their judgments and order therein shall be final
" and conclusive to all parties concerned."

But by 6 Geo. 3. c. 25. s. 6. "This act shall not "extend to THE STANNARIES of *Devon* and *Corn-* "*wall*, or lessen the jurisdiction of the chamberlain "of *London*, or of any other court within the said "city, touching apprentices."

The courts of the *Stannaries* and of the city of *London* excepted.

Several powers are also given to magistrates, in case of parish apprentices, by 32 Geo. 3. c. 57.

By 33 Geo. 3. c. 55. s. 1. "Two or more of his "majesty's justices of the peace, assembled at any "special or petty sessions of the peace, upon com- "plaint being made upon oath before them, of any "neglect of duty, or of any disobedience of any "lawful warrant or order of any justice or justices "of the peace by any constable, overseer of the "poor, or other peace or parish officer, or upon "complaint made to such two or more justices "upon oath, by or on the behalf of any ap- "prentice to any trade or business whatsoever, "whether bound apprentice by any parish or town- "ship, or otherwise, provided that not more than the "sum of ten pounds be paid upon the binding of "such apprentice, against his or her master or mis- "tress, of any ill usage of such apprentice by such "master or mistress, (such constable, overseer, or "other officer, master or mistress, having been "duly summoned to appear and answer such "charge or complaint,) to impose upon convic- "tion any reasonable fine or fines, not exceeding "the sum of forty shillings, upon such constable, "overseer, or other officer, master or mistress re- "spectively, as a punishment for such disobedi- "ence, neglect of duty, or ill usage, and by warrant

Two justices, on the complaint of an apprentice, with whom not more than ten pounds has been given, of his having been ill used by his master, may fine such master in any sum not exceeding forty shillings.

" under the hands and seals of any two or more
" of such justices assembled, at any such special
" or petty sessions as aforesaid, to direct such fine
" or fines, if not paid, to be levied by distress and
" sale of the goods and chattels of the person or
" persons so offending, rendering the overplus (if
" any) after deducting the amount of such fine or
" fines, and the charges of such distress and sale,
" to such offender or offenders; and such fine or
" fines which may be imposed upon any such con-
" stable, overseer, or other officer as aforesaid, shall
" be applied and disposed of for the relief of the
" poor of the parish, township, or place, where the
" offenders shall respectively reside, at the discre-
" tion of the justices imposing the same, and such
" fine or fines, which may be imposed upon any
" such master or mistress, shall, at the discretion
" of the justices imposing the same, be either so
" applied and disposed of as aforesaid, or be other-
" wise paid and applied to or for the use and be-
" nefit of such apprentice, for or towards a recom-
" pence or compensation for the injury which may
" have been by him or her sustained by reason of
" such ill usage as aforesaid; and if any person
" shall be aggrieved by the imposition of such fine
" or fines as aforesaid, or by any order or warrant
" of distress for raising and levying the same, or
" by the judgment or determination of the said
" justices, or by any act to be done in the execu-
" tion of such warrant of distress, such person or
" persons so aggrieved, shall and may appeal to
" the next general or quarter sessions of the peace

" to be held for the county, riding, or division,
" within which such person shall reside, of which
" appeal ten days notice at the least shall be given;
" and for want of such distress, such person or per-
" sons shall be committed to the house of correction
" for any space of time not exceeding ten days."

Upon these acts it is observable that a more extensive power is given to the sessions than to justices in the first instance. That under the Statute 5 Eliz. c. 4. *one justice* is only constituted a *mediator*, and has no power to proceed, unless the master agree to be bound by his determination, and if he do not, the only course is to resort to the *sessions*; but if the master agree, though the apprentice do not, the magistrate may, by order under hand and seal, direct him to be discharged; for no option is given by the statute to the apprentice, but only to the master (*h*). The power given over indentures of apprenticeship to *two magistrates*, by the 20 Geo. 2. c. 19. is confined to *parish apprentices*, or others, *where the premium does not exceed five pounds.*

It was formerly held, that the power of discharge given by the Statute 5 Eliz. c. 4. is confined to apprentices in trades, specifically mentioned in the statute (*i*), but the modern decisions have settled that it extends to every description of apprentices (*k*). In Hawkesworth and Hillary's

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(*h*) 1 Burn. J. 128.—1 Salk. 67.

(*i*) 1 Ventr. 174.—2 Keb. 822.—2 Salk. 471.—5 Mod. 159.—1 Bott. 572.

(*k*) 1 Stra. 663.—1 Bott. 574, 5.

case (*l*), the apprentice was bound to a merchant and discharged, and Mr. Serjeant Williams (*m*) observes, that Lord Hale doubted whether the power of discharging was not confined to apprentices in those trades only which are mentioned in the statute; but Twysden and Raynsford, Justices, were of a contrary opinion. Afterwards it was decided agreeably to Lord Hale's opinion; but all the subsequent determinations are to the contrary, and it is now established that the statute gives the power of discharging all manner of apprentices (*n*).

Besides the power of *discharging*, the sessions have, by the 35th section of the 5 Eliz. c. 4. power to cause such *due correction and punishment* to be ministered unto the apprentice as they may think fit, and by virtue of this clause they may commit the apprentice; and Dr. Burn observes, that this being left indefinite it seems the most apposite, that the justices commit the apprentices to the house of correction for a time, to be kept to hard labour or otherwise corrected, as the nature of the offence may require; but that this clause in the act does not restrain but enlarges the power of magistrates over apprentices, beyond the power given them over the masters, whom the justices cannot punish (*o*), and the magistrates may inflict corporal punishment, or discharge an

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(*l*) 1 Saund. 314. 1 Stra. 663.
(*m*) 1 Saund. 316. n. 3. (*o*) Ante, 74.
(*n*) 2 Ld. Raym. 1410.—

apprentice, at their discretion (*p*). It has been held, that although the indenture be defective, on account of the binding being for less than seven years, yet the magistrates have power to punish the apprentice for misconduct, whilst he continued to serve under the indentures, or for surreptitiously running away without previous notice of his intention to vacate the indentures (*q*). But if the apprentice, when he attains the age of twenty-one, signifies his determination to vacate the indentures, the magistrates have no power to punish him for subsequent non-observance of the indenture (*r*), and if they do they will be liable to an action (*s*); but unless the conviction of the magistrates disclose the objection to their proceeding, the Court of King's Bench has no power to discharge the apprentice who has been committed for not serving (*t*).

Sessions where master lives.

The statute 5 Eliz. c. 4. directs, that the party grieved shall apply to one justice of the peace of the county, or to the mayor, &c. of the city, &c. where the master dwelleth; *and if he cannot compound and agree* the matter between him and the apprentice, he is to bind the master to appear at the next sessions, &c. A power is given therefore to the justices and sessions having jurisdiction over the place where the master lives, although the apprentice is bound elsewhere (*u*).

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(*p*) 1 Saund. 315.—1 Bott. 376 569.—1 Burn. J. 130.

(*q*) Ante, 33.—Calde. 26.—6 Term Rep. 652.

(*r*) 5 T. R. 715.—7 East.

(*s*) See observation of the Court in 7 East. 377.

(*t*) 7 East. 376.

(*u*) 1 Stra. 663. In this

Must be four county justices, met in general sessions.

The power of discharge is confined in counties to four justices at the least, one being of the quorum, and they must be assembled at a general sessions. Where four justices discharged an apprentice at a private sessions, the order was set aside (*v*). In cities, towns corporate, or market towns, the power is given to the mayor or head officer, with the consent of his brethren or men of best reputation within the place.

Sessions have an original jurisdiction.

It has been thought, that the legislature intended this power of dissolving the indenture to be exercised rather by way of appeal after the justice had tried in vain to compound the existing differences, than that the sessions should exercise it in the first instance, upon a direct application (*w*). But it was afterwards considered that the interference of a private justice was intended only to arbitrate and accommodate the dispute; and it is now settled that the sessions possess an original jurisdiction independent of any such previous application (*x*).

Master's appearance.

The act requires the discharge to be made

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case the apprentice was bound in London, to one of the freemen, and the indentures were enrolled there, and the master lived in Middlesex at the time of the complaint. The Court said, "they would not take "away the jurisdiction of the "mayor's court, but only give "a concurrent jurisdiction to "the justices of the peace for "the county." The reporter (Strange) adds, "the words of "the statute are very plain, "for they give a jurisdiction "to the justices where the apprentice lives." The report in Lord Raymond, 1410. gives no support to the foregoing dictum.

(*v*) Skin. 98.—1 Bott. 572.

(*w*) See the opinion of Twysden and Rainsford, J. Watkins *v.* Edwards, 1 Mod. 287.—Holt, C. J. anon.—1 Salk. 67.—1 Saund. 316.

(*x*) 1 Saund. 316. n. 4.—1 Salk. 68.—1 Bott. 573.—2 Salk. 491.—1 Str. 143.—Ib. 704.—Cas. Temp. Hardw. 101.—2 Str. 1014.—1 Bott. 577. S. C.

"upon the master's appearance." An objection was taken to an order of sessions which discharged an apprentice, that it did not state this appearance. But the Court held that the act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy. The apprentice's remedy therefore was not confined to proceedings on the recognizance, forfeited by non-appearance; but the sessions might proceed in the master's absence, as otherwise, if he ran away, the apprentice could not be discharged *(y)*. Master's appearance.

The original application was made in this case to a justice, and the parties being bound over to the sessions, must take notice, and appear without farther summons *(z)*. But where the application is in the first instance to the sessions, the party complained against must be summoned, and if he make default, it is equal to an appearance (*a*). And where the master is complained against, the order must set forth either that he appeared, or that he was summoned and made default, or it will be quashed for the defect. Because, although in cases of orders in general, the Court will presume *omnia rite esse acta*, yet that presumption is only in case of orders which do not in express terms require an appearance. But it is otherwise in an act Summons. Form of the order (*b*).

(*y*) 2 Salk. 491.—1 Bott. 572.—1 Saund. 313. n. 1.

(*z*) 1 Bott. 576.—1 Saund. 313. n. 1.

(*a*) 1 Bott. 576.—1 Saund. 313. n. 1.

(*b*) 1 Saund. 313. post, Appendix.—1 Burn's J., Apprent. E.

like that of 5 Eliz. c. 4. which gives the justices authority to proceed upon the appearance of the party; so that it is made an essential requisite to found their jurisdiction *(c)*.

Order of discharge on whose application.

An order of discharge may be made upon the application of either party; "for an apprentice may "be discharged from a bad master, and a bad ap- "prentice from his master (*d*)." But the sessions cannot discharge without shewing some cause, which must be set forth in their order (*e*). The usual causes for which the apprentice complains against the master are, cruelty and misusing his contract, either by neglecting to instruct him, or the like; and when the master applies to get quit of his apprentice, it is generally upon the ground of incorrigible misbehaviour. It has been held not to be sufficient if the order merely states that the master "misused his apprentice," or that the master "used him unkindly (*f*)," or that he refused to take him again (*g*), or that he refused to entertain him according to the indentures (*h*), it does not shew a sufficient ground for the discharge. Neither is it enough that the apprentice has married without his master's consent (*i*). And there is no power to discharge for sickness, as "where the apprentice was lame, and, "in the surgeon's opinion, incurably afflicted with

Ground of complaint.

Grounds of discharge how stated in order.

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(*c*) 1 Bott. 577.—1 Saund. 313. n. 1.—1 Bott. 574.—1 Str. 143.

(*d*) 1 Saund. 315.—Ib. 313. n. 2.

(*e*) 1 Bott. 577.—2 Str. 1013.—Ib. 704.—1 Bott. 576.

(*f*) 1 Saund. 313. n. 2.—1 Bott. 577.

(*g*) Str. 704.—1 Saund. 313. n. 2.

(*h*) 1 Bott. 577.

(*i*) 2 Ver. 491.—1 Bott. 572.

"the king's evil," for the master takes him for better or worse, and is to provide for him in sickness and in health (*k*).

Discharge for ideotcy.

But where a boy, who had been put out as a parish apprentice, plainly appeared to be an ideot, incapable of learning his trade, the Court confirmed an order of sessions, discharging his master of him. For it would be hard upon the master to keep one who could do him no service, while the parish should go free (*l*).

Order under hand and seal.

This order must be under the hands and seals of four justices (*m*), and enrolled as the act directs, or the superior court will set it aside (*n*).

Order how far conclusive.

No case has occurred in which the settlement has depended upon the validity of such an order of discharge. The power of a quarter sessions over it, when trying a question of settlement, is therefore undecided. But it may perhaps be concluded from analogy to the proceedings of ecclesiastical (*o*) and admiralty courts (*p*), that being a direct judgment upon the fact by a court not only of competent, but exclusive jurisdiction, it is conclusive of the question between contending parishes, although they are not immediately parties to the sentence, unless it has been obtained by fraud (*q*), or appears altogether void (*r*).

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(*k*) 1 Str. 99.—1 Bott. 574.

(*l*) Skin. 114.—1 Bott. 571.—Burr. S. C. 706.

(*m*) 1 Saund. 316. n. 5.—2 Salk. 470.—1 Bott. 572.—Burr. S. C. 248.—Carth. 198, 9.—Comb. 344.

(*n*) 1 Str. 99.—1 Bott. 574. 1 Saund.

(*o*) 4 Co. 29.—Carth. 225.—11 St. Trial. 218. 222. 285.

(*p*) 3 Bos. & Pul. 499.—5 East. 155.

(*q*) Amb. 762.

(*r*) Sir T. Raym. 405.—8 Term Rep. 268.—Case of the Flad Oyen, ib. 270. n. a.—1 Robin's Adm. Rep. 135.

On this ground in the late case, Ex parte Gill (*s*), where, upon a habeas corpus to bring up the body of an apprentice, the keeper of the house of correction returned, with the body of the party, a regular conviction of him by two magistrates, on the Statute 20 Geo. 2. c. 19. for a misdemeanor, in absenting himself as an apprentice from his master's service; it was held to be no answer, to shew by affidavit, that the party had bound himself when an infant, to serve till twenty-five, and that when he came of age he elected to avoid the indentures, after which the offence imputed had been committed; for this was proper matter to be shewn to the magistrates below, who, if the matter shewn to them were true, acted at their own peril in committing the party; but that the Court had no power to discharge an apprentice from his indentures, and were bound by the return of a regular conviction, where the objection did not appear on the face of the return, to remand the party. In the case of Finley *v.* Jowle (*t*), it was held, that the Statute 20 Geo. 2. c. 19. s. 4. which enables two magistrates, upon application or complaint, made upon oath by any master, against such apprentice as is described in the act, touching any misdemeanor in such service, to hear and determine the same, and to commit or discharge the apprentice, extends to a complaint in writing preferred by the master, and verified by the oath of another person.

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(*s*) 7 East. 376. (*t*) 12 East. 248.

Return of premium.

It is settled that the justices have power to order restitution of the premium received with the apprentice, or such part of it as they may think fit, as an incident to their authority to discharge(*u*). Formerly the Court of Chancery went considerable lengths in decreeing money advanced as a premium for the instruction of youth to be refunded. Thus where a father paid a hundred and twenty pounds on placing his son a clerk to an attorney, who then lay ill of the sickness whereof he died *within three weeks* after sealing the articles, and it was provided, that sixty pounds should be returned in case the master died *within one year*, for which sum a bill in equity was brought; the Court ordered a hundred guineas to be paid back to the complainant, notwithstanding the parties themselves had provided against accidents, and agreed in certain for a smaller retribution. Although in general *modus & conventio vincunt legem* (*v*). In another instance, the defendant, an apothecary, having turned away his apprentice, on account of negligence and misdemeanors laid to his charge, the Court ordered thirty pounds of the money received to be refunded, but it is added, that they were the rather induced to interfere, because the indentures were not enrolled, so that the matter was not cognizable before the Chamberlain of London (*w*). But notwithstanding these prece-

(*u*) 1 Saund. 313. n. 3. cites 1 Salk. 67, 68.—2 Salk. 491. S. C.—Skin. 108.—1 Bott. 571. 576. acc.—1 Stra. 79. *contra*. and see the proceedings in 2 Barnard. K. B. 244. 296.—Sess. Cases. 198.—1 Bott. 515.—2 Keb. 128.

(*v*) 1 Vern. 460.

(*w*) 2 Vern. 64. and see Finch. Rep. 396.

Return of premium.

dents, in a more recent case the Court of Chancery seems to have disclaimed this kind of jurisdiction, and to have referred it to justices of the peace (*x*). The son of the plaintiff's in equity was put an apprentice to the defendant for seven years, but quitted him on being misused; and the defendant's proceeding at law on a bond given by the plaintiff; he brought a bill in equity for an injunction, and for the delivery up of the bond; and the Lord Chancellor said, "This is a very unnecessary suit in this Court, and if I should take upon me to determine it here, it would be a vast expense to the masters and apprentices, and would be assuming a jurisdiction which does not at all belong me, but by the Statute of Eliz. is left entirely to justices of the peace, as a matter most proper for their determination. The only pretence for bringing it into equity, is the misuser, and why cannot this be as well determiued at law? for if an action is brought by the master, against the father of an apprentice, for a breach of covenant in the son's quitting his service, and it should appear that there has been a misuser of the apprentice, I should certainly direct a jury that this is no breach, for an apprentice may leave his master upon misuser. The only question is, whether the misuser is a discharge of the apprentice, which is a mere matter of law, nor is there the least pretence for coming into this Court." But with the consent of the defendant, his Lordship decreed, "that the injunction already granted be made perpetual,

(*x*) 1 Atk. 518.

and that the bond be delivered up to the plaintiff to be cancelled, and at the same time he ordered the plaintiff to pay the defendant his costs at law, or the action upon the bond, and also his costs in that Court." But where the master is dead, proceedings have been instituted in equity against his executors for a return of premium (*y*). And if the master become a bankrupt, the apprentiee is to be admitted a creditor for a reasonable proportion of the apprentice fee, where the master is incapable of carrying on the trade (*z*.)

Return of premium.

(*y*) Finch. Rep. 396.—1 Bott. 563.—1 Vern. 460.—Bac. Ab. Master and Servant, C. ante. 563. ante.

(*z*) 1 Atk. 149.—1 Bott.

# CHAPTER V.

## OF APPRENTICES OBTAINING THEIR FREEDOM AND SETTING UP IN TRADE, OR BEING EMPLOYED AS JOURNEYMEN: OF THE PENALTIES ON PERSONS WHO HAVE NOT SERVED AN APPRENTICESHIP SETTING UP TRADE, AND ON PERSONS EMPLOYING THEM AS JOURNEYMEN, AND OF THE MODE OF RECOVERING SUCH PENALTIES.

By the due service of an apprentice for seven years, in pursuance of the indenture of apprenticeship, he is enabled to set up in trade for himself, any where in England, except in certain corporate towns, where by immemorial custom, all foreigners, or persons not free of the corporation, are prohibited, as in London, from trading therein.

**I. Freedom of a town corporate.**

Wherever, by the custom of any town, borough, &c. the serving an apprenticeship entitles the party to his *freedom*, the proper officer refusing to admit him, without sufficient cause, may be compelled to do so by a mandamus (*a*); and by the 12 Geo. 3. c. 21. it was enacted, "That where any person entitled to his freedom, shall apply to the mayor, &c. to be admitted, giving notice, and spe-

(*a*) Sid. 107.—2 Show. 154.—1 Ld. Raym. 383.

cifying the nature of his claim, and such officer shall not admit him within a month afterwards, a mandamus shall go, and if he be admitted, such officer shall pay costs." Where to a mandamus to the Mayor of Oxford, to admit a person to be free of that city, who had served seven years apprenticeship, it was returned, that he put himself apprentice seven years, according to the custom, and that he covenanted to serve seven years, and not to marry within the time; and that within the first two years he married, and so broke his covenant; and that his master accepted of him to serve for the residue of the time; which he did, but not as an apprentice, but rather as a journeyman; though it was urged, that by his breach of covenant he lost his right of freedom, yet the Court held the contrary; and that though an action of covenant might lie, yet that it was no less of his freedom, and therefore awarded a peremptory mandamus to admit him (*b*). So, where to a mandamus to the Mayor of Lincoln, to admit A. to his freedom, he having served an apprenticeship there, the Mayor returned, that A. (being a quaker,) refused to take the usual oath, according to the custom of the said city, but offered to make the solemn affirmation and declaration required by the statute, the Court held this sufficient to entitle him to his freedom, within the Statute 7 and 8 Wm. 3. c. 34. (*c*); but it should seem, that if, by the custom of the corporation, a party is not entitled to his freedom

I. Freedom of a town corporate.

(*b*) Lev. 91.—Sid. 107.—Keb. Rep. 458.—Id. 470. 659.—T. Raym. 69.

(c) 5 Mod. 402.—Carth. 448. S. C.—Ld. Raym. 337. S. C.—2 Burr. 1004.

I. Freedom of a town corporate.

unless he has served as an apprentice to a freeman, resident in the borough, the non-compliance with such custom would be a sufficient return to a mandamus (*d*).

In general, freemen of corporate towns, who take apprentices, covenant to make their apprentices free at the end of their time, which they must perform accordingly (*e*).

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II. Setting up in trade, and employment of others in it.

At common law, every person might use or follow any trade he pleased, without serving an apprenticeship, and every one was at liberty to employ whom he thought fit (*f*). If the workman was inartificial, in the execution of the work which he undertook, he was liable to an action for his default, which was considered a sufficient preventative against bad workmanship (*g*). But it was in earlier times supposed, that this freedom of trade, permitting persons to exercise trades, in which they had little skill or experience, was detrimental to the public, and therefore, with a view the better to train up and enure persons to labour and industry from their youth, and to make them more skilful and expert, we find several ancient regulations restrictive of the common law right of every one to employ himself, and to be employed in any trade or occupation that might be thought fit.

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(*d*) 2 Term Rep. 2.

(*e*) 6 Mod. 227. 260.—Ld. Raym. 382.

(*f*) 1 Saund. 312. and id. 6. b. n. 2.—11 Coke, 53.—2 Bulstro. 191.—Skin. 133.

(*g*) Id. ibid. 317.—1 Burr.

The impolicy of these regulations has already been pointed out (*h*). We have now only to consider them in a practical point of view. The Statute 5 Eliz. c. 4. we have seen prohibits persons who have not served an apprenticeship, from being engaged in certain trades on their own account (*i*), under a penalty of 40*s*. a month; to which prohibitions, however, some exceptions have been introduced in favour of particular trades and persons, such as apprentices, who have given evidence to convict coiners; officers and soldiers, who have duly served his majesty; and hawkers and pedlars duly licenced. We will consider the particular enactments, and the decisions upon them, and then the modes of proceeding for the recovery of the penalties.

II. Setting up in trade, and employment of others in it.

By the 5 Eliz. c. 4. it is enacted, "that it shall "not be lawful to any person or persons, other than "such as now do lawfully use or exercise any art, "mystery, or manual occupation, *to set up, occupy,* "*use or exercise* (*i*) any craft, mystery, or occupa- "tion, now used or occupied within the realm of "England or Wales, except he shall have been "brought up therein seven years, at the least, as an "apprentice, in manner and form abovesaid; *nor to* "*set any person on work*, in such mystery, art, or oc- "cupation, being not a workman at this day, except "he shall have been apprentice, as is aforesaid; or "else having served as an apprentice, as is aforesaid, "shall or will become a journeyman, or hired by the

(*h*) Ante, 1 to 22.

(*i*) A person acting as a *journeyman* is not within the act, nor is he subject to any penalty, 4 Burr. 244. 9. post. 127.

II. Setting up in trade, and employment of others in it.

" year; upon pain, that every person willingly of-
" fending, or doing the contrary, shall forfeit and
" lose for every default 40*s*. for every month."

But by the 15 Car. 2. c. 15. hemp-workers of all kinds, net-makers, and makers of tapestry hangings, may set up without having served seven years. By 24 G. 3. sess. 2. c. 6. s. 4. all officers, mariners, and soldiers, who have been in the land or sea service, or in the marines, or in the militia, or any corps of fencibles, since the second year of his majesty's reign, and have not deserted their wives and children, may exercise such trades as they are apt for, in any town or place. By 26 G. 3. c. 107. s. 131. every person having served in the militia, when drawn out into actual service, being a married man, may exercise any trade in any town or place. By 6 and 7 W. 3. c. 17. an apprentice discovering two offenders guilty of coining, so as they be convicted, shall be deemed a freeman, and may exercise his trade, as if he had served out his time. And by the 17 G. 3. c. 33. it shall be lawful for any person carrying on or using the trade of a dyer within the counties of Middlesex, Essex, Surrey, and Kent, to employ journeymen who have not served an apprenticeship to the trade, without incurring any penalty. The like liberty is given to hatters *generally* by the 17 G. 3. c. 55. s. 5. and to woolcombers by 35 G. 3. c. 124. and licenced pedlars and hawkers are authorized to trade by 50 Geo. 3. c. 41. s. 22.

With respect to the construction on the Statute of 5 Eliz. c. 4. *in general*, we have seen that Lord

Mansfield considered it to be a penal law, restrictive of the natural and common law right, and therefore to be construed strictly (*j*). Sir Wm. Blackstone observes, that though the prevailing humour of the times has created a great variety of decisions, yet, upon the whole, the resolutions of the Courts have rather confined than extended the restrictiou s (*y*). We will consider the operation of this Statute under the following heads: 1st. What *trades* are within the Statute.—2d. What is a *using* of the trade within the Statute.—3d. What kind of *service as an apprentice* is sufficient.—4thly. What is an illegal *employment of Journeymen*.—5thly. The *modes of proceeding* for Penalties.

II. Setting up in trade, and employment of others in it.

## I. WHAT TRADES ARE WITHIN THE STATUTE.

THE Statute in terms only extends to crafts, arts, mysteries, or manual occupations, *then* used and occupied, (that is, on the 12th January, 1562.) Hence, it has been decided, that manufactures or trades, not in use at the time of passing that statute, are not within it (*l*), and that in any indictment, information or declaration upon it, it is necessary to aver, that the trade mentioned in the proceedings was then in use, unless it be a trade expressly mentioned in the Statute (*m*), and that the

*First*, What *trades* within the Statute.

(*j*) Ante, 15, 16.—1 Bac. Ab.—See also 1 Saund. 312.—n. 1.

(*k*) 1 Bla. Com. 428.

(*l*) 2 Salk. 611.—Ld. Raym. 514. 1188, 1410.—Bac. Ab. Master and Servant, D.—2 Campb. 397.—6 Esp. Rep. 131.

(*m*) Palm. 528.—Sid. 173.—2 Salk. 611.—Ld. Raym. 513. 1188. 1189.—4 Mod. 145, 6.—Comb. 288.—Bac. Ab. Master and Servant, D. 1.

*First*, What *trades* within the Statute.

evidence must support such allegation (*n*). It should seem from the *words* of the Statute, that it extends to every craft, mystery, or manual occupation then in use; but the inclination of the courts to limit the operation of this act, has induced them to decide, that it only extends to those trades, in which, upon any rational ground, it could possibly be contended that an apprenticeship could be expedient, and, therefore, the better decisions are, that the act only extends to such trades as imply mystery and craft, and require skill and experience, and that, consequently, a hemp-dresser, husbandman, &c. are not within the act, because they do not require learning or skill (*o*). But it seems to be properly a question of fact, for the decision of a *Jury*, whether the trade was known at the time of passing the act, or whether any skill be requisite to the exercise of it (*p*). Thus, on a motion to quash an indictment for using the trade of a fellmonger, it was urged, that this was a business which required no skill, for that it was only to pull the wool from the skin; but Lord Holt. Ch. J. said, if in the indictment it be averred to be a trade, at the time of making the Statute, the Court could not quash it, for whether it were a trade or no, or whether any skill be requisite to the exercise of it, is a matter of fact, proper for the trial of a jury; and in another case (*q*), the Court refused to quash

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(*n*) 2 Campb. 397.—Bac. Ab. Master and Servant, D. 1.

(*o*) Cro. Car. 409.

(*p*) 2 Salk. 611.—Ld. Raym. 1189.—Bac. Ab. Master and Servant, D. 1.

(*q*) 2 Salk. 611.—2 Ld. Raym. 1189.—1 Saund. 312. n. 1.

an indictment for using the trade of a seamstress, not having served as apprentice, because it was set forth in the indictment to be a trade in England at the time of making the Act, and if it were not so, then the defendant would have the advantage of it on the trial. However, there are some cases in which it has been determined by the *Court*, whether it were a trade within the Statute (*r*). Several of the decisions, as to what are trades within the Statute, are collected in Bac. Ab. title Master and Servant, D. Com. Dig. title Trade, D. 5. Vin. Ab. title Trade. The general principle having been above stated, an alphabetical list is subscribed :—

*First*, What *trades* within the Statute.

## WHAT TRADES ARE WITHIN THE STATUTE, AND WHAT ARE NOT.

| | |
|---|---|
| ARROW-HEAD-MAKERS, *are*. | See Stat. 5 Eliz. c. 4. s. 3. |
| BAKERS, *are*. ..... | Com. Dig. title Trade, D. 5.—Bac. Ab. Master and Servant, D. 1. |
| BARBERS, *are*. ..... | Vin. Ab. title Trade, A.—Com. Dig. Trade, D. 5.—Bac. Ab. Master and Servant, D. 1. |
| BOWYERS, *are*. ..... | See Stat. 5 Eliz. c. 4. s. 3. |
| BRAZIERS, *are not*. ..... | Vin. Ab. title Trade, 334.—*Qre*. |
| BREWERS, *are*. ..... | Vin. Ab. title Trade, 9.—Bac. Ab. Master and Servant, D. 1.—Com. Dig. Trade, D. 5. |

(*r*) Cro. Car. 409.—1 Lev. 243.—Com. Dig. Trade, D. —1 Saund. 312.

*First*, What *trades* within the Statute.

BUTCHERS, *are not*. ..... Vin. Ab. title Trade, 319.—See a precedent, 7 Wentw. 137.

CABLE-MAKERS, *are*. ..... Vin. Ab. title Trade, A.—*Qre*.

CAPPERS, *are*. ..... See 5. Eliz. c. 4 s. 3.

CLOTHIERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

CLOTHWORKERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

COACH-MAKERS, *are not*. .. In Ventris. 346.—Vin Ab. title Trade, A.—Bac. Ab. Master and Servant, D. 1. It appears to have been considered, that a coach-maker was a trade *within* the Statute, and certainly some description of carriages were in use at the time the Statute was passed; but it appears from Anderson's Hist. Com. Vol. I. p. 421. and 5 Hume, 484. that coaches were introduced by the Earl of Arundel, after the passing the Statute, and about the year 1580; and accordingly, it has been recently determined that a coach-maker is not a trade within the Statute, 2 Campb. 397.

COLLAR-MAKERS, *are not*. . Vin. Ab. title Trade, A.

COMB-MAKERS, *are*. ..... Bac. Ab. Master and Servant, D. 2.

COSTER-MONGERS, *are not*. . Com. Dig. Trade, D. 6.

COOKS, *are*. ..... Bac. Ab. Master and Servant, D. 1.—Com. Dig Trade, D. 5.

COOKS SHOPS, *are*. ..... Vin. Ab. Trade, A.—Bac. Ab. Master and Servant, D. 1.

CURRIERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

CUTLERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

DRAPERS, *are*. ..... Com. Dig. title Trade, D. 5.—Vin. Ab. Trade, A.

DYERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

*First*, What *trades* within the Statute.

FARRIERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

FELLMONGERS, *are not*. .... Bac. Ab. Master and Servant, D. 1.—Vin. Ab. Trade, A.—*Qre.*

FELTMONGERS, *are*. ..... Vin. Ab. title, Trade.—Com. Dig. title Trade, D. 5.—Bac. Ab. Master and Servant, D. 1.

FLETCHERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

FRUITERERS, *are*. ..... Bac. Ab. Master and Servant, D. 1.—But see Vin. Ab. title Trade, A.—Com Dig. Trade, D. 6.—*Que.*

FULLERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

GARDENERS, *are not*. ..... Com. Dig. title Trade, D. 6.—Vin. Ab. title Trade, 318.—Bac. Ab. Master and Servant, D. 1.

GLOVERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

HAT-MAKERS, *are* ..... See 5 Eliz. c. 4. s. 3.

HEMP-DRESSERS, *are not*. ... Com. Dig. title Trade, D. 6.—Vin. Ab. title Trade, A.—Bac. Ab. Master and Servant, D. 1.

HORNERS, *are*. ..... Vin. Ab. title Trade, A.—Bac. Ab. Master and Servant, D. 2.

HOSIERS, *are*. ..... See 5 Eliz. c. 4. s. 3.

HUSBANDMEN, *are not*. .... Bac. Ab. Master and Servant, D. 1.

IRONMONGERS, *are*. ..... Com. Dig. Trade, D. 5.—Vin. Ab. Trade, A.

KNIFE-HAFT-MAKERS, *are*. .. Com. Dig. title Trade, D. 5

MANTUA-MAKERS, *are not*. . Vin. Ab. Trade, A.—*Qre.*

MERCERS, *are*. ..... Vin. Ab. title Trade, A.

MERCHANTS, *are not*. ..... Bac. Ab. Master and Servant, D. 1, 2.—Vin. Ab. Trade, A.—*Qre.*

MERCHANT TAYLORS, *are not*. Too uncertain a description, Vin. Ab. title Trade, A.—Bac. Ab. Master and Servant, D. 1.

*First*, What *trades* within the Statute.

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| MILLERS, *are*. ..... | Vin. Ab. title Trade, A. 317. |
| MILLINERS, *are*. ..... | Vin. Ab. title Trade, A. 317.—11 Mod. 63, 64. pl. 5.—*Qre*. |
| PEWTERERS, *are*. ..... | See 5 Eliz. c. 4. s. 3. |
| PIN-MAKERS, *are*. ..... | Vin. Ab. title Trade, A. |
| PIPPINMONGERS, *are* ..... | Com. Dig. title Trade, D. 6.—Vin. Ab. title Trade, 319.—Bac. Ab. Master and Servant, D. 1.—*Qre*. |
| POINT-MAKERS, *are*. ..... | Com. Dig. title Trade, D. 5. |
| ROPE-MAKERS, *are not*. .... | Vin. Ab. Trade, A.—*Qre*. |
| SADLERS, *are*. ..... | See 5 Eliz. c. 4. s. 3. |
| SALESMEN, *are*. ..... | Vin. Ab. Trade, A.—*Qre*. |
| SALTERS, *are*. ..... | Vin. Ab. title Trade, A. |
| SCRIVENERS, *are*. ..... | Aliens Vin. Ab. Trade, A. 317. |
| SEAMSTRESSES, *are not*. .... | Vin. Ab. title Trade, A.—Bac. Ab. Master and Servant, D. 1.—*Qre*. |
| SHEREMEN, *are*. ..... | See 5 Eliz. c. 4. s. 3. |
| SHOE-MAKERS, *are*. ..... | Bac. Ab. Master and Servant, D. 2. |
| SILK-WEAVERS, *are*. ..... | Vin. Ab. title Trade, A. |
| SMITHS, *are*. ..... | See 5 Eliz. c. 4. s. 3. |
| SOAP-MAKERS, *are*. ..... | Com. Dig. title Trade, D. 5.—Vin. Ab. Trade, A. |
| SPURRIERS, *are*. ..... | Com. Dig. title Trade, D. 5. |
| SURGEONS, *are*. ..... | Vin. Ab. title Trade, A. |
| TALLOW-CHANDLERS, *are* .. | Vin. Ab. title Trade, A. |
| TAGGERS OF POINTS, *are*. .. | Vin. Ab. Trade, A. |
| TANNERS, *are*. ..... | Com. Dig. Trade, D. 5. |
| TAYLORS, *are*. ..... | Vin. Ab. title Trade, A.—Com. Dig. title Trade, D. 5.—Bac. Ab. Master and Servant, D. 1. |
| TILERS, *are*. ..... | Com. Dig. title Trade, D. 5.—Bac. Ab. Master and Servant, D. 1. |
| TUCKERS, *are*. ..... | See 5 Eliz. c. 4. s. 3. |
| TURNERS, *are*. ..... | See 5 Eliz. c. 4. s. 3. |

UPHOLSTERERS, *are*..... Com. Dig. title Trade, D. 5.—Vin. Ab. Trade, A. 317.—Bac. Ab. Master and Servant, D. 1

*First*, What *trades* within the Statute.

WEAVERS OF SILK, *are*. .... Vin. Ab. Trade, A.

WOOL-COMBERS, *are*. ..... Vin. Ab. title Trade, A.—Com. Dig. title Trade, D. 6.

## II. WHAT IS A USING OF A TRADE WITHIN THE STATUTE.

*Secondly*, What a *using* a trade.

IT appears to be settled, that in order to subject a party to the penalties of this Statute, he must follow the trade with a view to gain a profit, and that therefore the using of any trade in a party's own house, or in the private family of another, without any reward, is not within the Statute (*s*); and that consequently if a person make candles without selling them, he is not punishable (*t*), but if there be a sale, it is immaterial whether it be in England or abroad (*u*), provided the commodity were made in England. And as the object of the legislature was to encourage the education of youth in branches of trade, and to prevent bad workmanship; it is settled, that where a person, who has not served an apprenticeship, becomes partner with another who has, and does not interfere in the executive part of the business, he is not liable to the penalties of the Statute; because as

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(*s*) 8 Coke. 129.—11 Coke. 54.—Hob. 183. 211.—Bac. Ab. Master and Servant, D. 2.

(*t*) 2 Brownlow. 289.—8 Coke. 129. a.

(*u*) 2 Salk. 610.

*Secondly,* What a *using* a trade.

he did not interfere, no object of the Statute was defeated, and partnerships are frequently entered into with a view to combine the capital of one man with the ability and industry of another (*v*). And though it has been held that if a man, who has not served an apprenticeship himself, is engaged in trade, as principal, solely for his own advantage, he is liable to the penalty of the Statute, though he employ journeymen who have duly served (*w*); yet it is observed by the late Mr. Serjeant Williams, that the authority of the latter doctrine may be considered as shaken by the above mentioned decision in Reynard and Chase (*x*); and it is reported, that the latter doctrine was recognized by Lord Ellenborough at *nisi prius*(*y*), in a case where the defendant was prosecuted for using the trade of a miller, and it appeared that the defendant had not himself served an apprenticeship, but that his foreman had, and that the defendant never interfered in the manual occupation of the mill; and his Lordship alluded to the valuable mills at Wakefield, Leeds, &c. the property of several persons of the first families in the kingdom; but who would be liable to informations, or would be required to serve regular apprenticeships as millers, if the defendant could be considered as within the meaning of the Statute.

It has been said, that the using a trade in a

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(*v*) 1 Burr. 2.—2 Wils. 40.—1 Saund. 312.

(*w*) 2 Salk. 610.—Carth. 162.—3 Mod. 313.—1 Show. 241.—1 Saund. 312. n. 1.

(*x*) 1 Saund. 312. n. 1.

(*y*) Kent *v.* Dormay, Kingston Assizes, August 14, 1811.

*country village* is not within the Statute (z), and in the case of the King *v.* Langley, Mr. Justice Page said, he had known indictments quashed upon such exceptions; it is however observed in Buller's Nisi Prius, 192, that it could not now be allowed, and that Lord Chief Justice Lee made slight of the objection. And in a subsequent case (*a*), on a motion to quash an information against the defendant for exercising the trade of a baker, without having served an apprenticeship, at the parish of S. in Kent; one objection was, that it did not appear on the record, that the offence was committed in a city, borough, or market town; but the Court held, that neither the enacting part of the Statute, nor the preamble, gave any foundation for this objection, and that the offence was clearly well laid, though they said, if it came out in evidence, that the defendant followed the business only in a small village, it had been the common practice to find for him (*b.*)

*Secondly,* What a *using* a trade.

It has been decided, that if a coachmaker keeps servants to make his wheels, and workmen to curry his own leather, this is contrary to the statute, because it is only he who receives all the profits of the several trades, and the wheelwright and the currier are but his servants (*c*). And in a case upon this Statute, prosecuted by the Horners' Company against a comb-maker, in London, for

(z) 1 Bla. Com. 128.—1 Ventr. 51.—2 Keb. 583.—Bac. Ab. Master and Servant, D. 1.

(*a*) 1 Burr. 366.—1 Saund. 312. n. 1.

(*b*) 1 Saund. 312. n. 1.—Com. Dig. Trade, D. 5.—1 Burr. 366.

(*c*) Carth. 163, 4.—Shower. 267.—Comb. 479.—Bac. Ab. Master and Servant, D. 2.

*Secondly*, What a *using* a trade.

using the trade of a horner, viz. in pressing horns for making combs, which pressing did not belong to their trade, this was adjudged a breach of the Statute, because a horner is a particular trade, and a very ancient company in London (*d*). These decisions, however, may be considered as shaken, if not entirely over-ruled, by the case of Reynard and Chase, if the persons employed were journeymen, who regularly served an apprenticeship (*e*). And in the recent case of Coward *v*. Maberly (*f*), it was decided, that a man is not liable to penalties under this Statute, who merely exercises the trade *incidentally* as a branch of his general business, and that therefore a master coachmaker may lawfully keep journeymen blacksmiths in his employ to make the iron work for coaches, although he has not served an apprenticeship to the trade of a *blacksmith*. So of a master carpenter and journeymen sawyers; and Lord Ellenborough said, "I am quite clear this case is not within the Statute, and that any man may lawfully carry on *particular branches of a general business* by such as have served *an apprenticeship* to those particular branches of the business in which they were employed. The defendant has not been proved to have set up or to have exercised the trade of a blacksmith; blacksmith's work may be required in building a bridge, but a builder who employs

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(*d*) Carth. 162.—Comb. 180.—Show. 242.—1 Mod. 190.

(*e*) Ante. 122.—1 Saund. 312. n. 1.

(*f*) 2 Campb. 127; and see 5 Esp. 110, 111, 112. and see Com. Dig. Trade, D. 6. cites Shower. 242.—Noy. 133.—Vin. Ab. Trade, E. pl. 1. but see 2 Shower. 267. and other cases, Vin. Ab. Trade, E.

a journeyman properly qualified to do that work, is not himself to be considered as *carrying on the trade of a blacksmith*. The Statute applies only to those who *substantively set up and exercise a trade* without having served an apprenticeship. The smith's work done by the defendant is only incidental to his general business of a coach-maker, and he might as well be prosecuted as a *carpenter, a painter, or wheelwright.*" Mr. Garrow afterwards stated, that the same doctrine had been laid down by Mr. Justice Lawrence (*g*), in an action against a master carpenter for carrying on the business of a sawyer. So it was recently decided in the case of Meazcan *v.* Pearsall (*h*), that a person carrying on a trade as *a trustee only for children*, is not liable to the penalty of the Statute, for carrying on a trade without serving an apprenticeship. For the defendant the case of Reynard *v.* Chase (*i*), was relied upon, in which it was decided, that the Statute extended not to cases where the party charged, as liable to the penalty, took upon himself no part of the management of the concern, but was a *dormant partner* only; that this case was much stronger; for here the defendant had no *interest* in the business, nor derived any advantage from it whatever: and Lord Ellenborough said, "A *mere trustee* who has the business *cast on him*, and who carries it on, *not* for his *own benefit*, but in *the character* of *trustee*, who does not assist in the several operations, or take any part in the conduct

*Secondly*, What a *using* a trade.

(*g*) The case was probably that in 5 Esp. Rep. 110, 1.

(*h*) 6 Esp. Rep. 1.

(*i*) 1 Burr. 1.

*Secondly*, What a *using* a trade.

of it, is not within the Statute. There is here no beneficial carrying on the trade, which only can by possibility subject the party to the penalty. The plaintiff must be called."

It has also been held, that this Statute does not abrogate the particular customs concerning trades in particular towns and villages (*k*), and that therefore a widow, by custom, may continue her husband's business, and it seems the opinion of some, that she may do it without any such custom, if she assisted her husband for seven years (*l*). It seems also established, that this Statute does not restrain a man from using several trades at the same time, provided he has served an apprenticeship to each (*m*); and on account of this law being considered as a harsh provision, it was even held in one case, that if a man has served an apprenticeship in one trade, he may set up in as many others as he may think fit, though he has not served an apprenticeship to them (*n*). But this doctrine, as observed by Lord Mansfield, would not prevail at this day (*o*), though it seems that a particular custom to this effect might be valid, though it has been found that it does not exist in London (*p*). It should seem, however, that a

(*k*) But see Palm. 542.—Com. Dig. Trade, D. 5.

(*l*) Bac. Ab. Master and Servant, D. 2.—Com. Dig. Trade, D. 5.—Carth. 163.

(*m*) Carth. 163.—1 Vent. 51.—2 Keb.—Shower. Rep. 242.—Bac. Ab. Master and Servant, D. 2.

(*n*) 4 Leon. 9.

(*o*) 1 Burr. 6. ante, 16.—Show. 266.—2 Bul. 190.—Com. Dig. Trade, D. 5.—Hardr. 54.—Vin. Ab. Trade, K. pl. 10.—3 Keble. 400 pl. 106.

(*p*) Vin. Ab. Trade, D. and T. 2.

single act of dealing for a particular purpose, would not be deemed a using of the trade, so as to subject the party to the penalty (*q*); and it is said, that if a man use a trade fourteen days in one month, and then ceases, and uses it again fourteen days in the next month, he is not punishable by the Statute (*r*). It has been decided, that a person who acts as a journeyman, not having served an apprenticeship, is not liable to the penalties of the Statute, but only his master for employing him, because the Statute was meant to prevent masters only from setting up trades, and did not intend to give a penalty against both, and there is a great difference between setting up a trade and working in it; a man may work in it by doing a very trifling part, and a journeyman doth not exercise his trade upon his own account, but for his master (*s*).

*Secondly*, What a *using* a trade.

## III. WHAT KIND OF SERVICE IS SUFFICIENT.

THE words of the Statute 5 Eliz. c. 4. are, "having served as an apprentice in manner and form above said," and there can be no doubt, but the legislature intended, that the party should have served an actual apprenticeship, but from the words "*as* an apprentice" being used in this Statute, and its being a penal law, the judges have deter-

*Thirdly*, What service as apprentice sufficient.

(*q*) 1 Burr. 609.—4 East. Rep. 346.
(*r*) Vin. Ab. Trade, B.—
12 Mod. 642.
(*s*) 4 Burr. 2449.—3 Mod. 315. 317.

*Thirdly*, What *serving* as apprentice sufficient.

mined, that he serves *as* an apprentice, who has without interruption worked at, or in any manner followed a trade for seven years, either as master, servant, or inmate; and that he who has worked at, or followed several trades for seven years, may use them all (*t*); and where a person served as an apprentice six years, and one year as a journeyman, the Court held, that he was entitled to set up in trade(*u*).

So if the wife of a tradesman be employed in his trade for seven years, and he dies, she may use the trade after his death (*v*). Nor is it material that the party should have followed the trade for seven years in England, it is sufficient if he has been employed in it abroad (*x*), and five years service abroad and two in England will suffice (*y*), and he shall be at liberty to make out the term of seven years by months and weeks at different periods (*z*), but the merely serving five years abroad according to the law of that country is not sufficient (*a*). Nor is it material to have followed the trade under a master who had a right to exercise it (*b*). In Smith *v.* Company of Armourers and Braziers of London (*c*), upon an issue tried upon a return to a mandamus, where it appeared that the party had conducted the business of cer-

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(*t*) 2 Wills. 168.—1 Bla. Rep. 233.—1 Saund. 312. n. 1.

(*u*) 3 Keble. 400.

(*v*) 1 Barnad. 367.—1 Saund. 312. n. 1.—Bac. Ab. Master and Servant, D. 2.—Vin. Ab. Trade, C.

(*x*) 1 Salk. 67.

(*y*) Id. ibid. 3 Keb. 550.

(*z*) Bul. N.P. 193.—2 Salk. 613.—1 Saund. 309. n. 6.—See 2 Bott. 398.

(*a*) Vin. Ab. Trade, C. pl. 5.—10 Mod. 70.

(*b*) Bull. N. P. 193.—10 Mod. 70.

(c) Peake's Cas. 148.

tain great iron founders for fifteen years as clerk and porter, but did not know how to manufacture the commodity by his own personal labour, Lord Kenyon held, that he had served as an apprentice sufficiently to entitle him to his freedom. In this respect the law seems more favourable to a person setting up in trade, than to his gaining a settlement, for if he serve even as an apprentice for eight years, he will not gain a settlement unless the binding were by deed (*d*).

*Thirdly*, What kind of service sufficient.

## IV. WHAT ARE ILLEGAL EMPLOYMENTS OF JOURNEYMEN.

With respect to the *employment of persons*, who have not served an apprenticeship, it was held in Beale *v.* Geale (*e*), that where a master workman employs in a trade within 5 Eliz. c. 4., a person who had never before worked in it, under a parol agreement to *teach him* the business, in consideration of a *premium*, and to pay him *weekly wages*, this is not an *apprenticeship* within the meaning of the Statute, and the master is thereby subject to a penalty for setting to work in his trade one who had not served therein seven years as an apprentice. And Lord Ellenborough said, "If Dean (the person employed) could be considered as an apprentice, certainly this action cannot be supported. He may have been an apprentice to some purposes, but within the meaning

*Fourthly*, What an illegal *employment of journeymen*.

(*d*) 5 T. R. 153. (*e*) 2 Campb. 1.

*Fourthly*, What an illegal *employment of journeymen.*

of this Act, I think he was a workman of that class whom it is declared unlawful to employ. There is no instrument to constitute the relation of master and apprentice between him and the defendant; there is no evidence of any term being fixed upon, during which he was to continue in the defendant's service; and he was to be paid weekly wages from the moment of his being set to work at the business. The defendant therefore is liable to a penalty, whatever may be the policy of the Statute by which it is imposed." But in the case before mentioned, we have seen that a master, who has not served an apprenticeship, may legally employ journeymen and apprentices, if the business be directed by a journeyman, and the apprentices be bound to him, and the master do not interfere in the executive part of the business (*f*). Journeymen employed in a principal business, may be legally employed in subordinate branches connected with it (*g*). In Evans *v.* Hunter (*h*), it was held, that in an action on this Statute, for setting to work a journeyman who had not served an apprenticeship, the plaintiff cannot recover any penalty that had been incurred a year before the commencement of the suit, although the defendant continued to employ the same journeymen within the year. It has been well observed, that it is fortunate that there is not much inducement, from pecuniary considerations, to bring an action on this Statute, as the plaintiff cannot recover for his

(*f*) Ante, 122.
(*g*) 5 Esp. Rep. 110.—2 Campb. 127.
(*h*) 2 Campb. 293.

own use more than twelve pounds, and he must pay his own costs.

## V. MODE OF PROCEEDING FOR PENALTIES.

*Fifthly, Mode of prosecution.*

THE mode of proceeding for the recovery of the penalties before mentioned, is pointed out by the 5th Eliz. c. 4. sections 39. and 45.; the 31st Eliz. c. 5. s. 7.; and the 21st Jac. 1. c. 4. s. 1. &c.

The 5 Eliz. c. 4. s. 39. enacts, That the one half of all forfeitures and penalties expressed and mentioned in this Estatute, other than such as are expressly otherwise appointed, shall be to our sovereign lady the Queen's Majesty, her heirs and successors, and the other moiety to him or them that shall sue for the same in any of the Queen's Majesty's courts of record, or before any of the justices of oyer and terminer, or before any other justices, or president and council before remembered, by action of debt, information, bill of complaint or otherwise; in which actions or suits, no protections, wager of law or essoin shall be allowed; and that the said justices, or two of them, whereof one to be of the quorum, and the said presidents and council, as is aforesaid, and the said mayor or other head officers of cities or towns corporate, shall have full power and authority to hear and determine all and every offence and offences that shall be committed or done against this Estatute, or against any branch thereof, as well upon indictment to be taken before them in the

Who shall have the forfeitures mentioned in this Statute. Moor. 886. 1 Cro. 499.

Justices of Peace, Mayor, &c. may hear and determine all offences committed against this Statute. 31 El. c. 5. 1 Salk. 370. 2 Ld. Raymond. 767. 6 Mod. 220.

sessions of the peace, as upon information, action of debt, or bill of complaint, to be sued or exhibited by any person; and shall and may by virtue hereof, make process against the defendant, and award execution, as in any other case they lawfully may by any the laws and Estatutes of this realm; and shall yearly, in Michaelmas term, certify by estreat, the fines and forfeitures of every the offences contained in this statute, that shall be found before them, into the Court of Exchequer, in like sort of form as they be bound to certify the estreats for other offences and forfeitures to be lost before them; any thing in this Statute contained to the contrary notwithstanding.

Who shall have the forfeitures in cities and towns corporate.

Provided always, and be it enacted by the authority aforesaid, That all manner amerciaments, fines, issues, and forfeitures, which shall arise, grow, or come by reason of any offences or defaults mentioned in this act, or any branch thereof, within any city or town corporate, shall be levied, gathered, and received by such person or persons of the same city or town corporate, as shall be appointed by the mayor or other head officers mentioned in this said act, to the use and maintenance of the same city or town corporate, in such case and condition as any manner other amerciaments, fines, issues, or forfeitures have been used to be levied and employed within the same city or town corporate, by reason of any grant or charter from the queen's majesty that now is, or of any her grace's noble progenitors, made and granted to the same city, borough, or town corporate;

any thing or clause before mentioned and expressed in this act to the contrary notwithstanding.

The 31 Eliz. c. 5. s. 7. enacts, That all suits for using any art or mystery in the which the party hath not been brought up according to the statute in that behalf made, shall be sued and prosecuted in the general quarter sessions of the peace, or assizes of the same county where the offence shall be committed, or otherwise inquired of, heard and determined in the assizes, or general quarter sessions of the peace of the same county where such offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the same county where such offence shall happen or be committed. 18 El. c. 5. 27. El. c. 10. 21 Jac. 1. c. 4.

The 21 Jac. 1. c. 4. s. 1. is as follows: "Whereas the offences against divers and sundry penal laws and statutes of this realm may better, and with more ease and less charge to the subject, be commenced, sued, informed against, prosecuted and tried, in the counties where such offences shall be committed: and whereas the poor commons of this realm are grievously charged, troubled, vexed, molested, and disturbed by divers troublesome persons, commonly called relators, informers, and promoters, by prosecuting and enforcing them to appear in his Majesty's Courts at Westminster, and to answer offences supposed by them to be committed against the said penal laws and statutes, or else to compound with them for the same:" For remedy whereof, be it enacted by the autho-

18 El. c. 5. Informations upon penal statutes shall be prosecuted in the counties where the offences were committed. 4 Inst. 172. Style 209. 223. 340. 356. 381. 383. 1 Vent. 3. 3 Inst. 193. Latch. 192. Hetley. 103. 5 Mod. 225. Cro. Car. 112. 146. 316. Jones. 193. Raym. 394. 1 Hale. H. P. C. 297. 2 Haw. P. C. c. 26.

*Fifthly, Mode of prosecution.*

rity of the present parliament, that all offences hereafter to be committed against any penal statute, for which any common informer or promoter may lawfully ground any popular action, bill, plaint, suit, or information, before justices of assize, justices of *nisi prius* or goal-delivery, justices of oyer and terminer, or justices of peace in their general or quarter sessions, shall, after the end of this present session of parliament, be commenced, sued, prosecuted, tried, recovered, and determined, by way of action, plaint, bill, information or indictment, before the justices of assize, justices of *nisi prius*, justices of oyer and terminer, and justices of goal-delivery, or before the justices of peace of every county, city, borough, or town corporate, and liberty, having power to inquire of, hear and determine the same, within this realm of England, or dominion of Wales, wherein such offences shall be committed, in any of the courts, places of judicature, or liberties aforesaid respectively, only at the choice of the parties which shall or will commence suit or prosecute for the same, and not elsewhere, save only in the said counties, or places, usual for those counties, or any of them: And that the like process upon every popular action, bill, plaint, information, or suit, to be commenced, or sued, or prosecuted after the end of this present session of parliament, by force of or according to the purport of this act, be had and awarded, to all intents and purposes, as in an action of trespass, *vi & armis*, at the common law; and that all and all manner of informations, actions, bills,

1 Vent. 8. Carthew. 465. 1 Lev. 249.

plints, and suits whatsoever, hereafter to be commenced, sued, prosecuted, or awarded, either by the Attorney General of his Majesty, his heirs or successors, for the time being, or by any officer or officers whatsoever for the time being, or by any common informer or other person whatsoever, in any of his Majesty's Courts at Westminster, for or concerning any of the offences, penalties or forfeitures aforesaid, shall be void and of none effect; any law, custom, or usage to the contrary thereof notwithstanding. *Fifthly, Mode of prosecution.*

Upon these statutes the prosecution for the recovery of the penalty may be considered under two heads:—1st, The court in which the proceeding may be instituted; and, 2ndly, the modes and form of proceeding.

## I. *The Court in which the Proceeding may be instituted.*

It is now settled that the Statute 21 Jac. 1. c.4. s. 1. restrains actions upon the Statute 5 Eliz. c. 4. from being brought in the Courts at Westminster, unless for offences *arising in Middlesex*, where these Courts sit, though the contrary was formerly holden. Hence in any action for an offence against this Statute, brought in one of the Courts at Westminster, it would be a ground of nonsuit if it appeared on the trial that the offence was committed in another county (*a*). These Statutes however do not oust the Courts at Westminster

(*a*) 1 Saund. 312. n. 1.— D. 4.—Com. Dig. Trade, D. 7. Bac. Ab. Master and Servant,

*Fifthly, Mode of prosecution.*

of their general superintending jurisdiction over the inferior courts, and after an indictment has been found, or information preferred in the inferior Court, it may be removed by *certiorari* into the Court of King's Bench, after which it may be tried there, or in the county by *nisi prius* (*b*).

## II. *The Mode and Form of Proceeding.*

WHERE the offence was committed in Middlesex, an *action* may be brought in either of the Courts at Westminster, the declaration in which must bring the case within the Statute in every particular, shewing the nature of the principal trade exercised by the defendant (*c*), and averring, that it was a trade in use either in England or Wales (*d*) at the time of passing the act, unless it be one of the trades mentioned in the act (*e*). But as the Statute is so ancient, it is not now necessary, as heretofore, to aver, that the defendant did not exercise the trade at the time the act was passed (*f*). It must also be shewn, that the defendant never had been educated to the

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(*b*) Jones.193.—Cowp.369.—Bac. Ab. Master and Servant, D. 4.; see form of proceedings on an indictment removed by certiorari, into K.B. 1 Saund. 308, &c.

(*c*) 1 Saund. 309. n. 3.—Com. Dig.Trade. D. 7.—Vin. Ab. Trade, K.

(*d*) 5 Esp. Rep. 110.—2. Salk.611.—2 Ld. Raym. 1189.

(*e*) 2 Keb.212.—2 Barnard. 147. 172.—1 Saund. 309. n. 4.

(*f*) 1 Saund. 309. n. 3.—1 Stra. 452.—Vin. Ab.Trade, K. 1 Burr. 367.—1 Saund. 309. n. 5.

trade *as an apprentice* (*g*); but it is not necessary to negative the qualifications allowed by subsequent statutes, for they must be shewn by the defendant (*h*). It must be shewn that the defendant used the trade for a month together, or upwards (*i*); and it should be laid that the defendant exercised the trade on such a day, and for so many months afterwards (*j*), but the plaintiff will not be compellable to prove, that the defendant used the trade all the time laid in the declaration (*k*). The declaration should conclude *contra formam statuti* (*l*); several persons cannot be jointly sued or prosecuted, for each is liable for a distinct penalty (*m*). It is said that a corporate court of sessions cannot entertain plea of an action on this statute (*n*). *Fifthly, Mode of prosecution.*

The method of proceeding in *other cases* is either by *information qui tam* (*o*) in the Courts of oyer and terminer, or sessions of the peace of the county, city, or borough, where the offence was committed; to recover the penalty, or by *indictment* (*p*) in those courts (*q*), and either of

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(*g*) 1 Saund. 309. n. 6.—2 Ld. Raym. 1179.

(*h*) 2 Burr. 1035.—1 Bla. Rep. 230.

(*i*) Vin. Ab. Trade, B. pl. 3.—12 Mod. 642.

(*j*) 11 Mod. 641.—Vin. Ab. Trade, H. pl. 3.

(*k*) Peake's Cases, 57.

(*l*) 1 Saund. 309. n. 7.

(*m*) 5 Mod. 180.—Salk. 382.—See Cases cited in 2 East. 573.—Bac. Ab. Master and Servant, D. 5.—Vin. Ab. Trade, K. pl. 15.

(*n*) Cowp. 194.—Vin. Ab. Trade, I.

(*o*) Cowp. 369.—See the forms, Lil. Ent. 303.—Com. Dig. Trade, D. 7.

(*p*) See the forms and proceedings, 1 Saund. 308, 9.

(*q*) See 1 Saund. 312. a. n. 1.—2 Ld. Raym. 1038.—1 Salk. 370.—1 Burr. 251, 2.—1 Salk. 373.—Cowp. 369.—Com. Dig. Trade, D. 7.

*Fifthly, Mode of prosecution.*

these proceedings may be removed into the Court of King's Bench by *certiorari* (*r*). The indictment must contain all the allegations, which we have seen are essential in a declaration (*s*), and the defendant may plead to it the general issuse, not guilty, and under it give in evidence any special exemption (*t*).

Where there is an immemorial custom in a corporation, to exclude foreigners, or persons not free of the trade, and there is a penalty imposed by a bye law, in order to enforce the custom, it may be levied by distress, or recovered by an action of debt, at the suit of the corporation or chamberlain; or if there be no bye law, the corporation may have an action on the case for the breach of the custom (*u*). But no indictment can be supported for trading contrary to a corporate law (*x*).

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(*r*) Ante, 135, 6.—Burn's Justice, tit. Certiorari.

(*s*) Ante, 136.

(*t*) 1 Saund. 310. n. 8.—Doug. 531.

(*u*) 1 Wils. 233. 237.—2 Wils. 266.—1 Saund. 312. c. n. 3.

(*x*) 4 Term Rep. 777.

FINIS.

# APPENDIX.

## STATUTE 5 ELIZ. c. 4.

### CONTAINING DIVERS ORDERS FOR ARTIFICERS, LABOURERS, SERVANTS OF HUSBANDRY, AND APPRENTICES.

Husbandmen may take apprentices.

XXV. AND for the better advancement of husbandry and tillage, and to the intent that such as are fit to be made apprentices to husbandry, may be bounden thereunto, Be it enacted by the authority of the present parliament, That every person being an householder, and having and using half a plough-land at the least in tillage, may have and receive as an apprentice any person above the age of ten years, and under the age of eighteen years, to serve in husbandry, until his age of one and twenty years at the least, or until the age of twenty-four years, as the parties can agree, and the said retainer and taking of an apprentice, to be made and done by indenture.

Every householder dwelling in any town corporate may take an apprentice for seven years. Vin. V. 3. 19. Burn. V. 1. 44.

XXVI. And be it further enacted, That every person being an householder, and twenty-four years old at the least, dwelling or inhabiting, or which shall dwell and inhabit in any city or town corporate, and using and exercising any art, mystery, or manual occupation there, shall and may, after the feast of St. John Baptist next coming, during the time that he shall so dwell or inhabit in any such city or town corporate and use and exercise any such mystery, art, or manual occupation, have and retain the son of any freeman, not occupying husbandry, nor being a labourer, and inhabiting in the same, or in any other city or town that now is or hereafter shall be and continue incorporate, to serve and be bound as an apprentice after the custom and order of the city of London, for seven years at the least, so as the term and years of such apprentice do not expire or determine afore such apprentice shall be at the age of twenty-four years at the least.

Merchants, &c. may take no apprentices but such whose parents

XXVII. Provided always, and be it enacted, That it shall not be lawful to any person dwelling in any city or town corporate, using or exercising any of the mysteries or crafts of a merchant, trafficking by traffick or trade into any of the parts beyond the sea, mercer, draper, goldsmith, ironmonger, em-

may dispend 40s. of freehold.

broiderer or clothier, that doth or shall put cloth to making and sale, to take any apprentice or servant to be instructed or taught in any of the arts, occupations, crafts, or mysteries which they or any of them do use or exercise; except such servant or apprentice be his son; or else that the father and mother of such apprentice or servant shall have, at the time of taking such apprentice or servant, lands, tenements, or other hereditaments, of the clear yearly value of forty shillings of one estate of inheritance or freehold at the least, to be certified under the hands and seals of three justices of the peace of the shire or shires where the said lands, tenements, or other hereditaments, do or shall lie, to the mayor, bailiff, or other head officers of such city or town corporate, and to be enrolled among the records there.

Whom they may have for their apprentices who dwell in market towns not corporate. 8 Cok. 129.

XXVIII. And be it further enacted, That from and after the said feast of St. John the Baptist next, it shall be lawful to every person being an householder, and four and twenty years old at the least, and not occupying husbandry, nor being a labourer dwelling or inhabiting, or that shall hereafter dwell or inhabit in any town not being incorporate, that now is or hereafter shall be a market town, so long as the same shall be weekly used and kept as a market town, and using or exercising any art, mystery, or manual occupation, during the time of his abode there, and so using and exercising such art, mystery, or manual occupation as aforesaid, to have in like manner to apprentice or apprentices, the child or children of any other artificer or artificers, not occupying husbandry, nor being a labourer, which now do, or hereafter shall inhabit or dwell in the same, or in any other such market town within the same shire, to serve as apprentice or apprentices as is aforesaid, to any such art, mystery, or manual occupation, as hath been usually exercised in any such market town, where such apprentice shall be bound, in manner and form abovesaid.

What apprentices merchants, &c. dwelling in a market town not corporate may take. Cro. El. 723.

XXIX. Provided always, and be it enacted, That it shall not be lawful to any person, dwelling or inhabiting in any such market town, using or exercising the feat, mystery, or art of a merchant, trafficking or trading into the parts beyond the seas, mercer, draper, goldsmith, ironmonger, embroiderer, or clothier, that doth or shall put cloth to making and sale, to take any apprentice, or in any wise to teach or instruct any person in the arts, sciences, or mysteries last before recited, after the feast of St. John Baptist aforesaid; except such servant or apprentice shall be his son; or else that the father or mother of such apprentice shall have lands, teuements, or other hereditaments, at the time of taking such apprentice, of the clear yearly value of three pounds, of one estate of inheritance or freehold at the least, to be certified under the hands and seals of three justices of the peace, of the shire or shires where the said lands, tenements, or other hereditaments do or shall lie, to the head officer or head officers of such market town where such apprentice or

servant shall be taken, there to be enrolled by such head officers always to remain of record.

XXX. And be it further enacted, That from and after the said feast it shall be lawful to any person using or exercising the art or occupation of a smith, wheel-wright, plough-wright, mill-wright, carpenter, rough mason, plaisterer, sawyer, lime-burner, brick-maker, bricklayer, tyler, slater, helier, tile-maker, linen-weaver, turner, cowper, millers, earthern potters, woollen-weaver, weaving huswives or houshold cloth only and none other cloth, fuller, otherwise called tucker or walker, burner of oare and wood-ashes, thatcher or shingler, wheresoever he or they shall dwell or inhabit, to have or receive the son of any person as apprentice in manner and form aforesaid, to be taught and instructed in these occupations only, and in none other, albeit the father or mother of any such apprentice have not any lands, tenements, or hereditaments.

These artificers may take apprentices whose parents may dispend no land.

1 Lev. 249. 2 Salk. 611. Carthew. 162. 3 Mod. 152.

XXXI. And be it further enacted by the authority aforesaid, That after the first day of May next coming, it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use or exercise any craft, mystery, or occupation, now used or occupied within the realm of England or Wales; except he shall have been brought up therein seven years at the least as an apprentice, in manner and form aforesaid; nor to set any person on work in such mystery, art, or occupation, being not a workman at this day: except he shall have been apprentice as is aforesaid; or else having served as an apprentice as is aforesaid, shall or will become a journeyman, or be hired by the year; upon pain that every person willingly offending or doing the contrary, shall forfeit and lose for every default forty shillings for every month.

None may use any manual occupation, except he hath been apprentice to the same, &c. 31 El. c. 5. 22 Geo. 2. c. 44. 3 Bulstr. 179. 1 Roll. 10. 2 Roll. 391. Stiles. 223. 383. Distillers exempted by 12 Annæ, Stat. 2. c. 3. s. 1.

1 Lutw. 164. 1 Lev. 87. 2 Lev. 206. 8 Co. 129. 11 Co. 54. Cro. El. 737. Cro. Jac. 85. 178. 538. Cro. Car. 316. 347. 499. 516. Hob. 211. 183. Noy. 5. 1 Vent. 8. 51. 142. 174. 326. 346. 364. 3 Keb. 816. 843. 1 Mod. 26. 2. Mod. 246. 3 Mod. 313. 2 Ld. Raymond, 1188. 1248. See 1 Bur. 5. 251. 389. 2 Burr. 1096. 4 Bur. 2449. 2 Wils. 40.

XXXII. Provided always, and be it further enacted by the authority aforesaid, That no person or persons using or exercising the art or mystery of a woollen-cloth weaver, other than such as be inhabiting within the counties of Cumberland, Westmorland, Lancaster and Wales, weaving frizes, cottons or huswives cloth only, making and weaving woollen cloth, commonly sold or to be sold by any clothman or clothier, shall take and have any apprentice, or shall teach or in any wise instruct any person or persons in the science, art or occupation of weaving aforesaid, in any village, town or place, (cities, towns corporate and market towns only except,) unless such person be his son, or else that the father or mother of such apprentice or servant shall at the time of the taking of such person or persons to be an apprentice or servant, or to be so instructed,

What sort of persons woollen-weavers may take apprentices.

Repealed by 5 & 6 W. and M. c. 9.

have lands or tenements or other hereditaments, to the clear yearly value of three pounds at the least, of an estate of inheritance or freehold, to be certified under the hands and seals of three justices of the peace of the shire or shires where the said land, tenements or other hereditaments do or shall lie; the effect of the indenture to be registered within three months in the parish where such master shall dwell, and to pay for such registering four pence; upon pain of forfeiture of twenty shillings for every month that any person shall otherwise take any apprentice, or set any such person on work contrary to the meaning of this article.

He that hath three apprentices must keep one journeyman.

XXXIII. And be it further enacted by the authority aforesaid, That all and every person and persons that shall have three apprentices in any of the said crafts, mysteries or occupations of a cloth-maker, fuller, sheerman, weaver, taylor, or shoemaker shall retain and keep one journeyman, and for every other apprentice above the number of the said three apprentices, one other journeyman, upon pain for every default therein ten pounds.

A proviso for the liberties of worsted-makers in Norwich and Norfolk, 14 and 15 H. 8. c. 3.

XXXIV. Provided always, That this act, nor any thing therein contained, shall not extend to prejudice or hinder any liberties heretofore granted by any act of parliament, to or for the company and occupation of worsted-makers and worsted-weavers within the city of Norwich, and elsewhere within the county of Norfolk, which liberties be in force until the beginning of this present parliament; any thing herein contained to the contrary in any wise notwithstanding.

The punishment of him that refuseth to be an apprentice.

XXXV. And be it further enacted, That if any person shall be required by any householder, having and using half a plough-land at the least in tillage, to be an apprentice, and to serve in husbandry, or in any other kind of art, mystery or science before expressed, and shall refuse so to do, that then upon the complaint of such housekeeper made to one justice of the peace of the county wherein the said refusal is or shall be made, or of such housholder inhabiting in any city, town corporate or market town, to the mayor, bailiffs or head officers of the said city, town corporate or market town, if any such refusal shall there be, they shall have full power and authority by virtue hereof, to send for the same person so refusing: And if the said justice, or the said mayor or head officer shall think the said person meet and convenient to serve as an apprentice in that art, labour, science or mystery, wherein he shall be so then required to serve, that then the said justice, or the said mayor or head officer, shall have power and authority by virtue hereof, if the said person refuse to be bound as an apprentice, to commit him unto ward, there to remain until he be contented and will be bounden to serve as an apprentice should serve, according to the true intent and meaning of this present act.

The remedy for the ap-

And if any such master shall misuse or evil entreat his apprentice, or that the said apprentice shall have any just cause to

complain, or the apprentice do not his duty to his master, then the said master or apprentice being grieved, and having cause to complain, shall repair unto one justice of peace within the said county, or to the mayor or other head officer of the city, town corporate, market town or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the said master and his apprentice, as the equity of the cause shall require; and if for want of good conformity in the said master, the said justice of peace, or the said mayor or other head officer cannot compound and agree the matter between him and his apprentice, then the said justice, or the said mayor or other head officer, shall take bond of the said master to appear at the next sessions then to be holden in the said county, within the said city, town corporate or market town, to be before the justices of the said county, or the mayor or head officer of the said town corporate or market town, if the said master dwell within any such; and upon his appearance and hearing of the matter before the said justices, or the said mayor or other head officer, if it be thought meet unto them to discharge the said apprentice of his apprenticehood, that then the said justices, or four of them at the least, whereof one to be of the quorum; or the said mayor or other head officer, with the assent of three other of his brethren, or men of best reputation within the said city, town corporate or market-town, shall have power by authority hereof, in writing under their hands and seals, to pronounce and declare that they have discharged the said apprentice of his apprenticehood, and the cause thereof; and the said writing so being made and enrolled by the clerk of the peace or town-clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors and administrators; the indenture of the said apprenticehood, or any law or custom to the contrary notwithstanding. And if the default shall be found to be in the apprentice, then the said justices, or the said mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministered unto him, as by their wisdom and discretions shall be thought meet.

prentice which is misused by his master, and for the master when the apprentice doth not his duty.
1 Mod. 2. 287.
1 Salk. 67, 68.
2 Salk. 490, 491.

Where an apprentice may be discharged of his apprenticehood.

XXXVI. Provided always, and be it enacted by authority of this present parliament, That no person shall by force or colour of this estatute be bounden to enter into any apprenticeship, other than such as be under the age of twenty-one years.

None shall be bound to be apprentices but those which be under 21 years of age.

XXXIX. And be it enacted by authority aforesaid, That the one half of all forfeitures and penalties expressed and mentioned in this estatute, other than such as are expressly otherwise appointed, shall be to our sovereign lady the Queen's Majesty, her heirs and successors, and the other moiety to him or them that shall sue for the same in any of the Queen's Majesty's courts of record, or before any of the justices of oyer

Who shall have the forfeitures mentioned in this Statute.
Moor. 886.
1 Cro. 499.

Justices of peace, mayor, &c. may hear and determine all offences committed against this Statute. 31 El. c. 5. 1 Salk. 370. 2 Ld. Raymond. 767. 6 Mod. 220.

and terminer, or before any other justices, or president and council before remembered, by action of debt, information, bill of complaint or otherwise; in which actions or suits, no protections, wager of law or essoin shall be allowed; and that the said justices, or two of them, whereof one to be of the quorum, and the said presidents and council, as is aforesaid, and the said mayors or other head officers of cities or towns corporate, shall have full power and authority to hear and determine all and every offence and offences that shall be committed or done against this estatute, or against any branch thereof, as well upon indictment to be taken before them in the sessions of the peace, as upon information, action of debt, or bill of complaint to be sued or exhibited by any person; and shall and may by virtue hereof make process against the defendant, and award execution, as in any other case they lawfully may by any the laws and statutes of this realm; and shall yearly in Michaelmas Term certify by estreat, the fines and forfeitures of every the offences contained in this estatute, that shall be found before them, into the Court of Exchequer, in like sort and form as they be bound to certify the estreats for other offences and forfeitures to be lost before them; any thing in this statute contained to the contrary notwithstanding.

A proviso for the cities of London and Norwich.

XL. Provided always, That this act, or any thing therein contained or mentioned, shall not be prejudicial or hurtful to the cities of London and Norwich, or to the lawful liberties, usages, customs or privileges of the same cities, for or concerning the having or taking of any apprentice or apprentices; but that the citizens and freemen of the same cities shall and may take, have and retain apprentices there, in such manner and form as they might lawfully have done before the making of this statute; this act, or any thing therein contained to the contrary in any wise notwithstanding.

The forfeiture of him that taketh apprentice otherwise than is limited by this statute.

XLI. And be it also further enacted, That all indentures, covenants, promises and bargains of or for the having, taking or keeping of any apprentice, otherwise hereafter to be made or taken, than is by this statute limited, ordained and appointed, shall be clearly void in the law, to all intents and purposes; and that every person that shall from henceforth take or newly retain any apprentice contrary to the tenor and true meaning of this act, shall forfeit and lose for every apprentice so by him taken, the sum of ten pounds.

He that is bound apprentice within the age of 21 years is compellable to serve. Cro. Car. 179.

'XLII. And because there hath been, and is some question 'and scruple moved, whether any person, being within the age 'of one and twenty years, and bounden to serve as an appren-'tice, in any other place than in the said city of London, 'should be bounden, accepted and taken as an apprentice.'

XLIII. For the resolution of the said scruple and doubt, be it enacted by authority of this present parliament, That all and every such person or persons that at any time or times from henceforth shall be bounden by indenture to serve as an appren-

tice in any art, science, occupation or labour, according to the tenor of this estatute, and in manner and form aforesaid, albeit the same apprentice, or any of them, shall be within the age of one and twenty years, at the time of the making of their several indentures, shall be bounden to serve for the years in their several indentures contained, as amply and largely to every intent, as if the same apprentice were of full age at the time of the making of such indentures; any law, usage or custom to the contrary notwithstanding.

A proviso for the inhabitants of Godalming in Surrey.

XLIV. Provided always, and be it enacted by the authority aforesaid, That the inhabitants now dwelling or inhabiting, or that hereafter shall dwell or inhabit within the town of Godalming within the county of Surrey, within the limits of the watch of the said town, may use and exercise such arts, mysteries and occupations, and take and use apprentices and servants, in such manner and form as the inhabitants within market towns by this statute may lawfully do.

Who shall have the forfeiture in cities and towns corporate.

XLV. Provided always, and be it enacted by the authority aforesaid, That all manner amerciaments, fines, issues and forfeitures which shall arise, grow, or come by reason of any offences or defaults mentioned in this act, or any branch thereof, within any city or town corporate, shall be levied, gathered and received by such person or persons of the same city or town corporate, as shall be appointed by the mayor or other head officers mentioned in this said act, to the use and maintenance of the same city or town corporate, in such case and condition as any manner other amerciaments, fines, issues or forfeitures have been used to be levied and employed within the same city or town corporate, by reason of any grant or charter from the queen's majesty that now is, or of any her grace's noble progenitors, made and granted to the same city, borough or town corporate; any thing or clause before mentioned and expressed in this act to the contrary notwithstanding.

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## (A.) Form of usual printed Indenture*.

THIS Indenture witnesseth, That A. B. doth put himself apprentice to C. D. to learn his art and with him (after the manner of an apprentice) to serve from the ..... unto the full end and term of seven years from thence next following, to be fully complete and ended. During which term the said apprentice his master faithfully shall serve, his secrets keep, his lawful commands every where gladly do; he shall do no damage to his said master, nor see to be done of others, but to his power shall let or forthwith give warning to his said master of the same;

* Note. It would be advisable to insert a clause providing for the death of the master, resembling the form (C.) post.

he shall not waste the goods of his said master, nor lend them unlawfully to any; he shall not commit fornication nor contract matrimony within the said term; he shall not play at cards, dice, tables, or any other unlawful games, whereby his said master may have any loss, with his own goods or others during the said term without licence of his said master; he shall neither buy nor sell; he shall not haunt taverns or playhouses, nor absent himself from his said master's service day or night unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his, during the said term. And the said A. B. his said apprentice, in the art of ..... which he useth, by the best means that he can, shall teach and instruct, or cause to be taught and instructed, limiting unto the said apprentice sufficient meat, drink, lodging and all other necessaries during the said term. And for the true performances of all and every the said covenants and agreements either of the said parties bindeth himself unto the other by these presents. In witness whereof the parties above named to these indentures interchangeably have put their hands and seals, the ..... day of ..... and in the ..... year of the reign of our sovereign lord ..... by the grace of God of the United Kingdom of Great Britain and Ireland, King, defender of the faith, and in the year of our Lord one thousand eight hundred and .....

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## (B.) An Indenture of a parish apprentice; on 43 El. c. 2. s. 1 5.

THIS Indenture, made the ..... day of ..... in the year of our Lord ..... between A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the parish of ..... in the county of ..... of the one part, and A. M. of ..... in the said parish, shoemaker, of the other part, witnesseth, That the said churchwardens and overseers of the poor, by and with the consent of ..... two of his majesty's justices of the peace for the said county, dwelling near to [or, in] the said parish of ..... one whereof is of the quorum, have put, placed, and bound, and by these presents do put, place, and bind A. P. a poor boy, whose parents B. P. and C. P. are not able to maintain him, of the age of ..... years, to be an apprentice with him the said A. M. and as an apprentice with him the said A. M. to dwell, from the date of these presents, until the said A. P. shall come to the age of ..... years, [or, (if a female,) until the said A. P. shall come to the age of ..... years, or the time of her marriage, which shall first happen,] according to the statutes in such case made and provided. By and during all which time and term, the said A. P. shall the said A. M. his said master, well and faithfully serve in all such law-

ful business as the said A. P. shall be put unto by the command of his said master, according to the power, wit, and ability of him the said A. P. and honestly and obediently in all things shall behave himself towards his said master, and honestly and orderly towards the rest of the family of the said A. M. And the said A. M. for his part, for himself, his executors, and administrators, doth hereby promise and covenant to and with the said churchwardens and overseers of the poor, and every of them, their and every of their executors and administrators, and their and every of their successors for the time being, and to and with the said A. P. that he the said A. M. shall the said A. P. in the craft, mystery, and occupation of a shoemaker, which he the said A. M. now useth, after the best manner that he can or may, teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in any wise appertaineth; and that the said A. M. shall also find and allow unto the said apprentice sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice, during the term aforesaid. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

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## (C.) Form of a proviso to be added to the covenant for maintenance.

Provided always, That the said last-mentioned covenant on the part of the said A. M. his executors and administrators, to be done and performed, shall continue and be in force for no longer time than three calendar months next after the death of the said A. M. in case he the said A. M. shall happen to die during the continuance of such apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intitled, "An Act for the further Regulation of Parish Apprentices."

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## (D.) The assent of two justices.

We ..... two of his majesty's justices of the peace for the abovementioned county of ..... dwelling near to the abovementioned parish of ..... and one of us of the quorum, do hereby declare our assent to the binding the above-named A. P. an apprentice to the above-named A. M. according to the form and effect of the above-written indenture. Given under our hands the ..... day of, &c.

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## (E.) Warrant to levy 10*l.* for not receiving a poor apprentice; on the Statute of 8 and 9 W.

Westmorland. To the constable of .....

Whereas A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the parish of ..... in the said county, by the assent of [us] ..... two of his majesty's justices of the peace for the said county dwelling near to [or, in] the said parish of ..... one whereof is of the quorum, did endeavour to bind A. P. a poor male child of the said parish, whose parents are not able to maintain him, apprentice to A. M. of ..... in the said parish, tailor, and for that intent did prepare and duly perfect one pair of indentures pursuant to the statute in such case made and provided, which said pair of indentures was signed and confirmed by [us] the said two justices: And whereas the said A. M. is duly convicted before us the justices aforesaid, as well upon the oath of the said A. P. or otherwise, for that he the said A. M. hath refused, and doth refuse to receive and provide for the said A. P. as an apprentice, and also to execute another part of the said indentures, being duly tendered to him by the said churchwardens and overseers of the poor, whereby the said A. M. hath forfeited the sum of ten pounds: These are therefore, in his said majesty's name, to require and command you, to make distress of the goods and chattels of him the said A. M. and if within the space of [six] days next after such distress by you made, the said sum of 10*l.* together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, pay the said sum of 10*l.* to the overseers of the poor of the said parish of ..... where the said offence was committed, for the use of the poor of the said parish; returning the overplus upon demand unto him the said A. M. the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Herein fail you not. Given under our hands and seals the ..... day of ..... in the year .....

---

## (F.) Summons of the master for misusing his apprentice; on 5 El. c. 4.

Westmorland. To the constable of .....

Whereas complaint and information hath been made unto me ..... one of his majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of ..... in the said county, shoemaker, that the said A. M. hath misused and

evil entreated him the said A. P. [by cruel punishment, and beating him the said A. P. without just cause, and by not allowing unto him sufficient meat, drink, apparel, or as the case shall be] : These are therefore in his majesty's name to command you to summon the said A. M. to appear before me at the house of ..... in the said county, on ..... the ..... day of ..... at the hour of ..... in the afternoon of the same day, to answer unto the said complaint ; and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the ..... day of, &c.

Note. A *summons*, rather than a *warrant*, in all such like cases, between party and party, is generally most eligible ; yet in this case it seemeth, that a warrant is justifiable to apprehend the master, and bring him before the justice (especially if he shall contemn the summons) ; because it is required that he shall give security to the justice to appear at the sessions, if he shall not conform to the justice's order in the premises.

---

## (G.) Summons of the apprentice on complaint of the master ; on the 5 El. c. 4.

Westmorland. To the constable of .....

Whereas complaint and information hath been made unto me ..... one of his majesty's justices of the peace in and for the said county, by A. M. of ..... in the said county, husbandman, that A. P. now being an apprentice to him the said A. M. is negligent, stubborn, disorderly [or as the case shall be], and doth not his duty to him the said A. M. his master ; These are therefore to command you to summon the said A. P. to appear before me, at ..... in the said county, on ..... the ..... day of ..... at the hour of ..... in the afternoon of the same day, to answer the said complaint, and to be further dealt with according to law. Herein fail not. Given under my hand and seal the ..... day of, &c.

---

## (H.) Order of discharge by four justices at the sessions ; on the 5 El. c. 4. s. 35

Westmorland. { At a general quarter sessions of the peace holden at ..... in and for the county aforesaid, the ..... day of ..... in the ..... year of the reign of our lord George the Third, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, and so forth ; Before ..... justices of our said lord the king, assigned to keep the peace in the said county, and also

to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, It is ordered as followeth :

Upon the petition of A. P. apprentice to A. M. of ..... in the said county, husbandman, to be relieved upon certain neglects of the said master in instructing him in his trade, and in misusing and evil entreating the said apprentice by cruel punishment [or as the case shall be] ; and the said master having likewise appeared upon his recognizance taken before J. P. esquire, one of the said justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint, but on the contrary, the said A. P. having given full proof of the truth of the said complaint to the satisfaction of the said court : We therefore, whose hands and seals are hereunto set, being four of the said justices, and of the quorum, do hereby order, pronounce, and declare, that the said apprentice shall be and is hereby discharged and freed from his said apprenticehood : And this is to be a final order betwixt the said master and apprentice, any thing contained in their indentures of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals the day and year first above written.

---

## (I.) Complaint of an apprentice to two justices against his master; on 20 G. 2. c. 19.

Westmorland. { The information and complaint of A. P. apprentice to A. M. of ..... in the said county, husbandman, exhibited before us, two of his majesty's justices of the peace in and for the said county, the ..... day of ..... in the year, &c.

Who saith, that he the said A. P. is an apprentice bound by indenture to A. M. of ..... aforesaid, husbandman ; and that he the said A. M. hath misused and ill treated him the said apprentice, and particularly [as the case shall be].

A. P.

Before us,

J. P.
K. P.

---

## (K.) Summons of the master by two justices, on complaint of the apprentice ; on the 20 G. 2. c. 19. s. 3.

Westmorland. To the constable of .....

Whereas information and complaint hath been made unto us, ..... two of his majesty's justices of the peace in and for the

said county, by A. P. apprentice to A. M. of ..... in the said county, husbandman, that he the said A. M. hath misused and ill treated him the said A. P. and particularly [as the case shall be]: These are therefore to require you to summon the said A. M. to appear before us at ..... in the said county, on ..... the ..... day of ..... to answer unto the said information and complaint. And be you then there to certify what you shall have done in the execution hereof. Herein fail you not. Given under our hands and seals the ..... day of ..... in the year .....

---

## (L.) Discharge of an apprentice by two justices, on the master misusing him, by the 20 Geo. 2. c. 19. s. 3.

Westmorland. { Whereas complaint hath been made before us ..... two of his majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of ..... in the said county, tailor, that he the said A. M. hath misused and evil treated him the said apprentice, and particularly [as the case shall be]: And whereas the said A. M. hath appeared before us in pursuance of our summons for that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary the said A. P. hath made full proof of the truth thereof before us upon oath: We therefore by these presents do discharge him the said A. P. of and from his apprenticeship to the said A. M.; any thing in the indenture of apprenticeship made betwixt them, or otherwise howsoever, to the contrary notwithstanding. Given under our hands and seals the ..... day of, &c.

[Or, And whereas it hath been duly proved before us, as well upon the oath of A. C. constable of ....., aforesaid, as otherwise, that he the said A. C. did duly summon the said A. M. to appear before us at a reasonable time in the said summons mentioned and specified; but notwithstanding the same, he the said A. M. hath not appeared before us according to such summons: We therefore having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us upon oath, do discharge, &c.]

---

## (M.) Complaint to two justices of the master against his apprentice; on the 20 G. 2. c. 19. s. 4.

Westmorland. { The complaint and information of A. M. of ..... in the said county, husbandman, taken and made on oath before us ..... two of his majesty's jus-

tices of the peace in and for the said county, the ..... day of ..... Who saith, that A. P. apprentice by indenture to him the said A. M. hath in the service of his apprenticeship been guilty of several misdemeanors, miscarriages, and ill behaviour towards him the said A. M. and particularly [as the case shall be].

A. M.

Before us,
J. P.
K. P.

---

## (N.) Warrant for a disorderly apprentice, by two justices, on the aforesaid complaint, by the 20 G. 2. c. 19. s. 4.

Westmorland. To the constable of .....

Whereas oath hath been made before us ..... two of his majesty's justices of the peace in and for the said county, by A. M. of ..... in the said county, husbandman, that A. P. apprentice to the said A. M. hath committed divers misdemeanors against the said A. M. his master, and particularly [as the case shall be]: These are therefore to require you forthwith to apprehend the said A. P. and bring him before us, to answer unto the said complaint, and to be dealt with according to law: And you are to give notice to the said A. M. that he appear before us at the same time, to make good the said complaint. Given under our hands and seals, &c.

---

## (O.) Commitment of an apprentice to the house of correction, on complaint of his master, by two justices; on the 20 G. 2. c. 19. s. 4.

Westmorland. { To the constable of ..... in the said county, and to the keeper of the house of correction at ..... in the said county.

Whereas complaint hath been made before us ..... two of his majesty's justices of the peace in and for the said county, upon the oath of A. M. of ..... in the said county, husbandman, that A. P. apprentice of the said A. M. hath committed divers misdemeanors against him the said A. M. his master, and particularly [as the case shall be]: And whereas upon examination thereof, and upon hearing the allegations of both parties, having come before us for that purpose, and upon due consideration had thereof, it manifestly appears to us that he the said A. P. is guilty of the premises so charged against him as aforesaid: We do therefore hereby command you the said

constable, to take and convey the said A. P. to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: And we do hereby command you the said keeper of the said house of correction, to receive the said A. P. into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of ..... Given under our hands and seals, the ..... day, &c.

---

## (P.) Discharge of an apprentice by two justices, on complaint of the master; by 20 G. 2. c. 19. s. 4.

Westmorland. { Whereas complaint, &c. (as in the last precedent) .... We do therefore by these presents discharge the said A. P. from his apprenticeship to the said A. M.; any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise, to the contrary notwithstanding. Given, &c.

---

## (Q.) Assignment of an apprentice.

To all whom these presents shall come: I A. M. of ..... send greeting. Whereas my apprentice A. P. hath divers years yet to come and unexpired of his apprenticeship, to wit, ..... whole years from the ..... day of ..... now last past, as by his indenture of apprenticeship to me sealed doth appear: Now know ye, that I the said A. M. for divers good causes and considerations me hereunto moving, have given, granted, assigned, and set over, and by these presents do fully and absolutely give, grant, assign, and set over, unto A. S. of ..... all such right, title, duty, term of years to come, service and demand whatsoever, which I the said A. M. have in or to the said A. P. or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship. And moreover, I the said A. M. do by these presents covenant, promise, and agree to and with the said A. S. his executors and administrators, that notwithstanding any thing by me the said A. M. to be done to the contrary, the said A. P. shall, during the said term of ..... years, well and truly serve the said A. S. as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term. Provided, that the said A. S. shall well entreat and use him the said A. P. and him the said A. P. in the craft, mystery, and occupation of a ..... which he the said A. S. now useth, after the best manner that he can or may, shall

teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in any wise appertaineth, and shall also during the said term find and allow unto the said A. P. sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice. In witness, &c.

---

## (R.) Form of the order of two justices, directing a parish apprentice to continue with the widow (or as the case may be) of his deceased master.

County of Westmorland. } Whereas F. M. within named, late of the parish of Orton, in the said county, died on the ..... day of ..... being within three calendar months now last past, we, two of his majesty's justices of the peace for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of A. M. widow [or as the case may be] of the said F. M. living with and being part of the family of the said F. M. at the time of his death, do hereby order and direct, that A. P. the apprentice within named, who was in the service and actual employment of the said F. M. at the time of his death, shall serve the said A. M. as such apprentice, for the residue of the term of such apprenticeship within mentioned, according to the provisions of an act passed in the thirty-second year of the reign of king George the Third, intitled, "An Act for the further Regulation of Parish Apprentices." Witness our hands this ..... day of .....

I, the abovenamed A. M. do hereby declare, that the above order is made at my request, and that I do accept the said A. P. as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand, the day and year above written.

---

## (S.) Form of the like order by a separate instrument.

County of Westmorland. } Whereas it appears unto us, two of his majesty's justices of the peace for the said county, that A. P. was bound an apprentice by the churchwardens and overseers of the poor of the parish of Orton, to F. M. late of the said parish of Orton, and that the said F. M. died on the ..... day of ....., being within three calendar months now last past: Now we the said two justices, on the application, and at the request, &c. [then to the end as before, *mutatis mutandis.*]

---

(T.) Form of the assignment of such a parish apprentice, with the consent of two justices, by indorsement on the indenture or counterpart.

County of } Be it remembered, That the within named
Westmorland. } F. M. by and with the consent and approbation of J. P. and K. P. two of his majesty's justices of the peace for the said county, whose names are subscribed to the consent here under written, doth hereby assign A. P. the apprentice within named, unto N. M. to serve him during the residue of the term within mentioned; and that he the said N. M. doth hereby agree to accept and take the said A. P. as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants within mentioned on the part of the said F. M. to be done and performed, according to the true intent and meaning thereof, and pursuant to the provisions of an act passed in the thirty-second year of the reign of George the Third, intitled, "An Act for the further Regulation of Parish Apprentices." In witness whereof we the said F. M. and N. M. have hereunto set our hands, this ..... day of .....

We two of his majesty's justices of the peace above mentioned, do consent thereto. Witness our hands, this ..... day of .....

J. P.
K. P.

---

(U.) Form of the like assignment by a separate instrument.

County of } Whereas it appears unto us J. P. and K. P.
Westmorland. } two of his majesty's justices of the peace for the said county, whose names are subscribed to the consent here under written, that A. P. was bound an apprentice by the churchwardens and overseers of the poor of the parish of Orton, to F. M. of the same parish of Orton, by indenture bearing date on or about the ..... day of ..... until the said A. P. should attain his age of twenty-one years. Now be it remembered, That the said F. M. by and with the consent, &c. [and so to the end as before, *mutatis mutandis*.]

---

(X.) Form of a conviction; under the 42 G. 3. c. 46.

Be it remembered, That on the ..... day of ..... in the year of our Lord ..... A. P. is convicted before us,

two of his majesty's justices of the peace for the ..... [specifying the offence, and the time and place when and where committed, as the case may be] contrary to an act made in the forty-second year of the reign of king George the Third, intituled [here set forth the title of this act]. Given under our hands and seals, the day and year abovementioned.

FINIS.

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